

RESPONSE BY CHIEF JUSTICE SUNDARESH MENON

OPENING OF THE LEGAL YEAR 2015

Monday, 5 January 2015

Mr Attorney,

Mr Thio Shen Yi SC,

Members of the Bar,

Ladies and Gentlemen:

I. Introduction

1. It gives me great pleasure to welcome all of you to this morning's proceedings. I am especially grateful to the Right Honourable Tun Arifin bin Zakaria, Chief Justice of Malaysia, and the Honourable Truong Hoa Binh, Chief Justice of the Supreme People's Court of Vietnam, and our many guests from abroad who have travelled to be with us this morning.
2. Mr Attorney and Mr Thio, you have both alluded to the particular importance of this, the 50th year of our nationhood. What a distance we have travelled as a people in that time! Accompanying our progression as a nation has been the development of our legal system, which, as I observed in my Response at my Welcome Reference, is foundational to liberty and to order in our society. We have very much to be grateful for as we look back and very much to anticipate as we look ahead.

A. Farewells

3. Let me begin with a brief retrospective of the year just past, which saw a significant number of changes to the Bench with four departures and six arrivals. Foremost among these was your appointment, Mr Attorney, following a decade of great distinction on the Bench. I congratulate you on your appointment and look forward to your continuing service to our community. I am certain that both the Attorney-General's Chambers, and more generally, the Singapore public, will benefit from your leadership.
4. I would also like to acknowledge Justice Andrew Ang, who retired after nearly a decade on the Bench. Justice Ang brought to the Bench the benefits of his experience accumulated over three decades of practice.
5. Finally, Judicial Commissioners Lionel Yee and Lee Kim Shin left us after completing their one-year terms on the Bench. Mr Yee is now the Solicitor-General, while Mr Lee has returned to practice.
6. I thank each of them and wish them well in their future endeavours.

B. Welcomes and Re-appointments

7. At the same time, we are pleased to welcome Justice Steven Chong on his return to the Supreme Court. Justice Chong completed a busy and eventful stint as the Attorney-General, and this, coupled with his illustrious career as a commercial lawyer and his successful earlier stint on the Bench, means that we have regained an experienced Judge with a powerful mix of wide-ranging experience as a public and as a private lawyer.

8. I also welcome five new Judicial Commissioners to the Bench. Judicial Commissioner See Kee Oon is concurrently the Presiding Judge of the State Courts, and comes with more than 20 years of judicial experience. He, together with Judicial Commissioners Hoo Sheau Peng, Valerie Thean and Aedit Abdullah joined us following long and successful careers in the Legal Service. I pause to note that with these appointments, we have a total of nine Judges who were appointed directly from the Legal Service - a striking indication of the quality of the Service. Finally, Judicial Commissioner Debbie Ong joined the Bench following a distinguished career as a highly respected academic with a particular focus in family law.
9. With these appointments, we enter the new legal year with 14 Judges and seven Judicial Commissioners. But as significant as the changes have been in the composition of the Bench over the past year, we stand at the threshold of more change. Earlier this morning, the Prime Minister's Office announced the appointment of two new Judicial Commissioners. They are Mr Chua Lee Ming who will join the Bench following a remarkable career spanning various branches of the Legal Service including the judiciary, private practice as a litigation lawyer as well as a long stint as General Counsel of one of our largest companies; and Mr Foo Chee Hock who has served in the judiciary for more than two decades including the last seven years in the role of the Registrar. They will each add diversity to the Bench.
10. The Bench will be strengthened further following recent amendments to the Constitution and the Supreme Court of Judicature Act providing for the creation of two new judicial appointments, namely Senior Judges and International Judges.

11. Our first batch of Senior Judges comprises retired Chief Justice Chan Sek Keong, as well as retired Justices Kan Ting Chiu, Lai Siu Chiu, Tan Lee Meng and Andrew Ang. Justice Chan will sit as an occasional member of the Court of Appeal on appeals from the High Court as well as from the Singapore International Commercial Court; while the other Senior Judges will work on a part-time basis and will hear most urgent matters as well as shorter non-docketed matters. They will also help with the training and mentoring of new Judges and the Judges of the State Courts. As for our first batch of International Judges, we have eleven truly eminent international jurists, and I will speak about their appointments shortly.
12. We will also have a new Registrar of the Supreme Court. I am delighted to welcome back to the Registry, Mr Vincent Hoong, who has had a distinguished career in the Legal Service accumulating a wealth of legal, judicial and managerial experience. He will soon step down from his current position as Chief Executive of the Singapore Land Authority.
13. Finally, let me take this opportunity to congratulate Mr Lok Vi Ming SC on completing his term as President of the Society and to extend my best wishes to you, Mr Thio, as you step forward to serve the profession in this capacity.

II. The next chapter in the Singapore legal sector

14. We stand at the cusp of Singapore's jubilee and it is an opportune moment for us to look back on the development of our legal sector over fifty years and also to look ahead to the next chapter. The story thus far has mirrored the personal journeys of so many of us who have come a long way from humble beginnings. From an initial preoccupation with meeting the basic needs of a small, fledgling

nation, our legal system today provides a stable basis for justice to be done, and to be seen to be done not only in Singapore but also in the wider region. Indeed, we have become a leading centre for dispute resolution in Asia, and can lay claim to having generated a critical mass of our own jurisprudence.

15. But we cannot rest on our laurels. To paraphrase from the great American legal scholar, Roscoe Pound, though the law must be stable, it cannot stand still. We must forge ahead and as we do so, there are two important principles that should guide the evolution of this narrative.
16. The first and paramount guiding principle is that our core mission is to serve our people. For most Singaporeans, legal issues concern intensely important and personal matters regardless of whether they also concern large amounts of money. Liberty, family distress and trauma and the accessibility of our justice system are what viscerally concern our citizens. We must therefore continue to design our legal frameworks and our processes with these imperatives in mind.
17. At the same time, we must keep in mind a second important guiding principle: if we are to build a world-class legal infrastructure, we must remain open to the region and the global community. Singapore's progress as a nation has always been yoked to an outward looking philosophy, and our legal system is no exception. With the constraints of our natural geography there has perhaps been little choice. But the challenge of our constraints also has the potential to become an opportunity not only for Singapore and Singaporeans but also for the immensely exciting region of which we are part.

III. Singapore's legal sector: The International Front

18. Let me first set the context. Trade flows into and out of Asia are surging in what some have suggested will be the "Asian Century". By 2050, according to some estimates, Asia could account for half of the global GDP, trade and investment.
19. Singapore, as a key legal and business hub in Asia, is well-placed to support this with some of the required legal infrastructure.

A. The Singapore International Commercial Court

20. This is the context against which I herald the official opening of the Singapore International Commercial Court immediately after this morning's proceedings. It will be useful to recount briefly the genesis of the idea to establish a dedicated international commercial court. It was driven primarily by two pressing ideas:
 - (a) The first was the recognition that the explosive growth in commercial activity in Asia will inevitably be accompanied by an increase in commercial disputes, and hence give rise to a corresponding need for institutions able to resolve those disputes swiftly, efficiently and predictably, while laying the groundwork for a freestanding body of supporting commercial law. This reflects an earnest desire to contribute to the promotion and development of the rule of law in this critical region.
 - (b) The second was the desire to enhance our contribution as a centre for the resolution of commercial disputes by developing an entire suite of options. The remarkable success of the Singapore International Arbitration Centre in recent years can be seen as a harbinger of what could be possible if we established similar world-class facilities for the resolution of such disputes

through mediation as well as by litigation, letting users choose which among these options best suited them.

21. The establishment of an international commercial court will therefore build upon and complement the success of our vibrant arbitration sector and make our judicial institutions and legal profession available to serve the regional and the global community. At the same time, it will grow our legal services sector and might even expand the scope for internationalising Singapore law.
22. To realise these aims, we must have a world-class Bench with impressive expertise in commercial law. I am delighted that His Excellency the President has appointed a group of eminent jurists of the highest calibre as the first International Judges of our Court to complement and work alongside our own Judges. I am confident that together, we are well-equipped to handle the work of the SICC. The International Judges hail from diverse geographical backgrounds and both the civil and common law traditions. Some of them remain serving judges in their own jurisdictions. In alphabetical order of their home jurisdictions, they are:
 - (a) From Australia:
 - (i) The Honourable Mr Dyson Heydon AC QC, former Judge of the High Court of Australia
 - (ii) The Honourable Justice Patricia Bergin, Chief Judge in Equity of the Supreme Court of New South Wales

- (iii) The Honourable Mr Roger Giles, former Judge of the Court of Appeal of the Supreme Court of New South Wales and currently Judge of the Dubai International Financial Centre Courts
- (b) From Austria, The Honourable Dr Irmgard Griss, former President of the Austrian Supreme Court
- (c) From France, The Honourable Justice Dominique Hascher, Judge of the Supreme Judicial Court of France
- (d) From Hong Kong, Mr Anselmo Reyes, former Judge of the Court of First Instance in Hong Kong, and Judge in charge of the Construction and Arbitration List as well as the Commercial and Admiralty List
- (e) From Japan, Professor Yasuhei Taniguchi, Professor Emeritus at Kyoto University and formerly Chairman and Member of the Appellate Body of the World Trade Organisation
- (f) From the United Kingdom:
 - (i) The Right Honourable Sir Bernard Rix, former Judge in charge of the Commercial Court and subsequently Lord Justice of Appeal in the Court of Appeal of England and Wales until his retirement in 2013
 - (ii) The Honourable Sir Vivian Ramsey, former Judge of the High Court of England and Wales and Judge in charge of the Technology and Construction Court

(iii) Mr Simon Thorley QC, a specialist in Intellectual Property law and former Deputy High Court Judge of England and Wales and Deputy Chairman of the Copyright Tribunal of the UK,

and,

(g) From the United States, The Honourable Ms Carolyn Berger, former Justice of the Supreme Court of Delaware and formerly the Vice-Chancellor of the Court of Chancery of that jurisdiction.

23. I am deeply grateful to each of them for having agreed to support this exciting project. The superb qualities of these jurists and their considerable expertise in commercial matters will be evident in the materials that are being separately made available to the media.

24. I also wish to thank the team that worked tirelessly to establish the court, which has become a reality within two short years. This has only been possible due to the collaborative efforts of the Supreme Court, the Ministry of Law, the Attorney-General's Chambers and the Bar.

B. The Transnational Convergence of Commercial Laws

25. Another significant development picks up from a subject I have spoken on previously, namely the realisation that diversity between legal systems, especially in Asia, can inhibit transnational commerce at a time when the boundaries continue to become increasingly porous in matters of trade and commerce. The legal fraternity must respond to this reality by proffering solutions that reduce avoidable legal diversity.

26. To this end, I have established a committee under the auspices of the Singapore Academy of Law (“the Academy”) to look into promoting the transnational convergence of commercial laws in Asia. The Committee, led by Mrs Lee Suet-Fern, will examine concrete ways in which this may be done. Professor S Jayakumar and I will work with the committee in an advisory capacity, and we anticipate that this will develop into a conversation that will gain increasing regional and international attention. To bring this forward, the Academy intends to host an international conference for regional and international stakeholders within the next 12 to 16 months on the convergence of Asian business laws.
27. We are also looking into establishing a permanent institute that will fortify these efforts through the development of research capabilities. Such an institute will bring together Judges, academics, legal practitioners, in-house lawyers and legal think-tanks from the region and beyond to collaborate on the incubation of Asian business law. This promises to be a boon to businesses and I expect they will welcome the opportunity to participate in this substantial long-term endeavour. We are also reaching out to other major like-minded jurisdictions.

IV. Singapore’s legal sector: The Domestic Front

28. Let me turn to the domestic front and examine some of the key initiatives we have been working on to enhance the delivery of justice to every member of our society. Some of these measures are incremental, while others are fundamental. They are unified by a common thread which I will come to when I speak about how we will strengthen the fibre at the core of our legal system.

A. Family Justice

29. Let me begin with one of the most significant changes which took place last year – the creation of the Family Justice Courts on 1 October 2014 when the Family Justice Act came into effect. This too commenced with an announcement at the Opening of the Legal Year two years ago and the introduction of this critically important legislation again resulted from the collaborative efforts of the Judiciary, the Ministry of Law, the Ministry of Social and Family Development, the Attorney-General's Chambers and the Bar. I am deeply grateful to all those who made this possible.
30. The Family Justice Courts consist of the new Family Division of the High Court, the Family Courts, and the Youth Courts and this month it will also take over the probate jurisdiction. This structural transformation has resulted in an integrated family justice system which seeks to develop a better way to resolve family disputes; while placing at the forefront, the interests of children, who are often the victims of collateral damage in marital breakdowns. Children will be given the means to voice their needs so that they can receive the support they deserve. The Court must become a safe space where children are assured of being heard and shielded from becoming the pawns of feuding parents.
31. To succeed in our quest to improve the administration of family justice, we must shift our focus towards the relationships which will continue long after the lawsuit has been concluded. The processes of the Family Justice Courts will thus be designed with continuity in mind. Mediators, counsellors and mental health practitioners are now integral parts of the family court process, so that sustained support can be rendered to families in need. This must be balanced

against the importance of avoiding protracted court proceedings that prolong the trauma. The ability to strike that balance amidst many dynamic considerations is not something that can be systemically programmed. It must come down, instead, to the judicious treatment of each case and each distressed family and I have every confidence in the ability of the Judges of the Family Justice Courts to meet their task with distinction.

B. Criminal Justice

32. I turn to criminal justice. This year, we will see many of the State Court's existing efforts come to fruition even as we seed new initiatives. The Progress Accountability Court has been an ongoing project being developed in collaboration with the Singapore Prison Service, and this has culminated in a two-year pilot which will commence this quarter. The final phase of the Integrated Criminal Case Management System, which was rolled out in July 2013, will also be launched this month.
33. In the second quarter of 2015 we expect to see the completion of the Sentencing Information and Research Repository, which will be an invaluable tool for Judges, Prosecutors and members of the Defence Bar. With a common database, sentencing should be more transparent and consistent.
34. We have also commenced convening special 3-Judge panels in the Supreme Court to hear selected Magistrates' Appeals and provide guidance on issues of sentencing. Three such appeals were heard last year to resolve some difficult questions, and a framework has been developed by the Sentencing Council and the State Courts to refer appropriate appeals for hearing by such panels.

As the framework becomes more entrenched, we can expect that these decisions will help promote coherence and consistency.

35. I wish also to touch on the vital issue of access to criminal justice. This year the State Courts will explore two further avenues to complement the existing measures. The first centres on enhancing case management and minimising pre-trial delays. To this end, the State Courts will study the possibility of introducing a docket system for complex criminal matters, especially where multiple charges are involved.
36. The second is the provision of legal assistance for accused litigants-in-person even before the matter reaches the court. The State Courts will study the possibility of expanding the Guidance for Plea Scheme to cover cases at the mentions stage, and extending the Primary Justice Project to criminal cases so that legal assistance can be rendered to deserving accused litigants-in-person at an earlier stage.
37. Efforts to improve access to criminal justice will also be strongly augmented this year by the launch of the enhanced Criminal Legal Aid Scheme, which has been made possible by the Ministry of Law's agreement to provide funding for criminal legal aid and by the generosity of the Bar. It is envisaged that up to 6000 accused persons may benefit annually from the enhanced Criminal Legal Aid Scheme. I am very grateful to all those who have already pledged contributions to the scheme and commend the Steering Committee that was led by Justice Tan Siong Thye for galvanising such a groundswell of support.

C. Civil Justice

38. It should be evident that the State Courts play a critical role in our legal system. I am grateful to the Presiding Judge, Judicial Commissioner See Kee Oon, for his able stewardship of the many changes effected last year to raise the standing of the State Courts. The team has gotten off to a flying start with several initiatives, of which I mention just two that impact upon civil justice.
39. The first is the Primary Justice Project, which I referred to just moments earlier. This was launched in May 2014 in collaboration with the Law Society and the Community Justice Centre to make basic legal advice available at a fixed low cost with a view to encouraging early settlement. A substantial number of practitioners have volunteered their services for this project, a further testimony to the fact that a more comprehensive approach to pro bono legal assistance is gaining traction in our community.
40. The second is the enactment last December of the new O 108 of the Rules of Court, which simplifies the civil process for small value claims with a robust procedure that is characterised by upfront discovery, active case management including court-directed ADR, and the option of a simplified trial. We expect this too will significantly boost access to justice.
41. Let me turn to the Supreme Court's work in the context of civil justice.
42. Having successfully implemented our docket system for the High Court, our attention turned to enhancing the processes in the Court of Appeal. A number of new measures have been implemented. Highlights include the constitution of 5-Judge panels to hear selected cases of jurisprudential significance and

inviting submissions from selected non-parties, generally the relevant public authority to address germane issues of public policy. The Rules of Court have also been amended to streamline the hearing of applications for leave to appeal and the filing of documents in the case of consolidated appeals.

43. I am also happy to report that we have once again achieved our key performance indicator of concluding 85% of writ actions within 18 months of their filing. But we must continue in our quest to improve. A major concern in the next phase is the management of litigation costs.
44. Let me mention three steps that have been taken or are being developed with this in mind:
 - (a) Costs scheduling, where parties are required to furnish their costs estimates before the outcome in a case is known, has been formally introduced in the Supreme Court Practice Directions. This is a useful tool to enable the court to obtain a reasonable picture of the level of costs claimed, and it also discourages satellite litigation over the issue of costs.
 - (b) Second, we have sought to lay the groundwork for implementing costs budgeting in order to ensure proportionality. Because this is not yet a familiar concept in our jurisdiction, a pilot project involving eight cases has been launched. With the docket system, the assigned judge should be well-placed to help ensure that cases are being managed within a sensible budget. Our Judges have been trained and briefings have been conducted for members of the Bar. I look forward to its full integration within our civil practice in due course.

(c) Third, these measures will be enhanced by the imminent publication of costs guidelines in the Supreme Court Practice Directions and on the Supreme Court website. Although the issue of costs remains fully at the discretion of the court, these guidelines will serve as a signpost to the parties of the level of costs that they can expect at various stages of litigation.

45. Beyond this, we can and will do more. Our civil procedure, which was originally largely received from England, has undergone significant, but ultimately evolutionary and often piecemeal development over the years. I believe that there is much to be gained from studying the possibility of a revolutionary change to our civil procedure. To this end, I have constituted a Civil Justice Commission chaired by Justice Tay Yong Kwang. The Commission's terms of reference will not be confined to reform but will extend to considering transformational changes to the litigation process aimed at reducing the costs of litigation, enhancing efficiency and effecting modernisation. It is envisaged that the Commission will undertake a two to three year study which will undoubtedly be a significant and substantial undertaking; and it must also be a collective one. The Commission will include members drawn from the Judiciary, the Attorney-General's Chambers, the Bar and academia. Without pre-empting the extensive scope of the Commission's work, I envisage it will examine such issues as:

(a) The simplification of the Rules of Court;

(b) The elimination of time-consuming and costs-wasting procedural steps;

- (c) The avoidance of outdated language while preserving established legal concepts;
- (d) Leveraging on advancements in information technology; and
- (e) Allowing greater judicial control of the litigation process to ensure the proportionate conduct of litigation.

46. I am confident that the Commission's recommendations will be both bold and innovative.

V. The integral role of the judiciary

47. In the course of my Response this morning I have touched upon many areas where we are pushing the boundaries of our work within the justice system. These efforts would not be possible without a strong judiciary. Our judges have been at the core of our legal development and they must continue to lead this effort in changing times. It is therefore imperative not only that the right people are appointed, but also that they are provided with ample opportunities for continuing education and development.

48. With a relatively small pool of judges, judicial training has hitherto been largely decentralised, with each court taking the responsibility for organising programmes suited to its own needs. When I took office a little over two years ago, one of my early aspirations was to institutionalise and pull together the various judicial education programmes that had been discretely developed. I considered that the time for this had come, not least because judges today are faced with a vastly different operating climate.

49. I am delighted to announce that after a period of study and reflection, I have taken the decision to establish the Singapore Judicial College which will manage and develop these efforts. It gives me great pleasure to officially launch the College today. Mr Foo Chee Hock will be its first Dean and will undertake this responsibility alongside his judicial duties.
50. District Judge Mr Tan Boon Heng will run the day-to-day operations of the College as its Executive Director. The assignment of two senior judicial colleagues to drive the initiative to upgrade our training efforts marks a historic step for us.
51. The immediate objective is to bring all our judicial training under the auspices of the College and to develop and strengthen the curricula so as to enhance our ability to discharge our judicial functions. This will cover induction as well as continuing training and development of our Judges and judicial officers; but it will also extend to technical assistance and educational programmes that we may offer to colleagues from other jurisdictions to share experiences including the experience we have built up over the years in such areas as organisational excellence, the use of technology, active case management and other judiciary-led reforms.
52. In addition to this, a very special and unique dimension that the College will develop is an empirical judicial research laboratory with the aim of serving as a test bed for innovation in judicial studies, practices and policies. The empirical research will allow new or existing practices in the courts to be tested and to have the premises or assumptions that underlie them validated (or not as the case may be). We can experiment with new ideas and study the findings to

identify areas for improvement. To move this forward, the College has invited the Faculty of our two law schools to submit research proposals for consideration and I am given to understand that these are in the works.

53. The Judicial College will be guided in the development of policies by a Board of Governors that consists of Judges and academics, chaired by Justice Andrew Phang with Justice Quentin Loh as the Deputy Chairman. I wish to express my heartfelt appreciation to each of them. I also wish to thank Justice Heydon and Professor Joseph Weiler for readily accepting my invitation to serve on the Board. I know that all of you will join me in wishing the College every success.

VI. Appointment of Senior Counsel

54. I turn to the appointment of Senior Counsel. The Selection Committee this year was satisfied that four candidates have demonstrated their suitability for appointment as Senior Counsel. They join the highest ranks of the profession and I have no doubt they will be mindful of the heavy responsibility that comes with this. They are:

- (a) Mr Lee Kim Shin, following the completion of his term as a Judicial Commissioner;
- (b) Mr Tan Chuan Thye;
- (c) Ms Mavis Chionh Sze Chyi; and
- (d) Mr Edwin Charles Tong Chun Fai.

I congratulate each of them and look forward to their continuing contribution to the profession.

VII. Conclusion

55. By every measure, this jubilee year promises to be a very special one for Singapore as a whole and we in the legal profession must do our part to build on the superb foundations laid by the pioneers of this country. If not for them, we would not have the opportunities that lie before us.
56. We must not forget our past, even as we look to our future, which promises to be bright. And we must approach the future with a deft balance, aspiring towards playing a responsible regional or international role, while continuing our quest for excellence in our domestic legal framework. Pursuing both ends simultaneously will be challenging. If we are to advance, we will have to break new ground, or, in the best Singapore tradition, reclaim solid earth from the legal sea. But if we put our hearts and minds to it, I am confident that we will successfully write a new chapter in the development of Singapore's legal sector and bequeath to our successors a legacy that is enhanced from the one that we inherited.
57. Thank you all very much for your presence this morning and I wish everyone a happy, healthy and satisfying year ahead.