

RESPONSE BY CHIEF JUSTICE SUNDARESH MENON

OPENING OF THE LEGAL YEAR 2017

MONDAY, 9 JANUARY 2017

Mr Attorney

Mr Vijayendran

Members of the Bar

Ladies and Gentlemen,

I. Introduction

1. On behalf of the Judiciary, it gives me great pleasure to welcome you to this morning's proceedings. I am especially grateful to the Honourable Chief Justice James Allsop of the Federal Court of Australia, the Honourable Chief Justice Prof Dr M Hatta Ali and Justice Takdir Rahmadi of the Supreme Court of the Republic of Indonesia, and the Right Honourable Tun Arifin bin Zakaria, Chief Justice of Malaysia, for joining us this morning.

II. Felicitations

2. As you have each already noted, we enter this New Year amidst notable changes in the composition of the Bench and also in the leadership of the Attorney-General's Chambers and the Law Society.

3. Justice Judith Prakash and Justice Tay Yong Kwang were appointed as Judges of Appeal last year. Justice Prakash served more than two decades in the High Court and many of her judgments, in particular on arbitration and commercial law, have been influential both domestically and internationally. Justice Tay, who served almost two decades in the High Court, has deep experience in criminal and public law and also commands immense respect in all matters of civil procedure. Both of them will add to the collective strength and diversity of the Court of Appeal, which now has a complement of 5 judges. I look forward to their contributions to the jurisprudence of our apex court.
4. Justice Chao Hick Tin's term was extended until the later part of this year. It is a privilege to serve as a Judge in the company of Justice Chao. He is revered by all of us on the Bench and, indeed, by the profession at large. He brings wisdom, composure and exemplary temperament to each hearing in which he participates. Judicial Commissioner Debbie Ong, too, had her term extended after a successful initial term of 2 years, in the course of which she dealt not only with family law matters, an area in which she was a renowned scholar, but also presided over a range of trials and other contentious matters on the civil list.
5. I am also pleased to welcome Judicial Commissioners Pang Khang Chau and Audrey Lim to the Bench, both of them having served with distinction in the Legal Service.
6. Finally, Mr Edmund Leow left the Bench after 3 years as a Judicial Commissioner. I thank him and wish him well on his return to private practice.

7. Mr Attorney, your presence at this morning's proceedings caps a distinguished stint in the public service. That follows a long and successful career at the Bar, during the course of which we practised together as partners. I will say a few words on this towards the end of my remarks this morning. Upon your retirement, Mr Lucien Wong will assume the office of the Attorney-General.
8. Mr Wong, you enter public service after almost four decades in private practice. As one of the most accomplished corporate lawyers in our legal history, you are held in high esteem by your colleagues in the profession, and have led one of the largest and most successful law firms in Singapore. I am confident that you will bring to the Attorney-General's Chambers the same dynamism, leadership, energy and brilliance that has characterised your career to this point. I congratulate you on your appointment as the next Attorney-General. You will find that it is an immensely meaningful and satisfying vocation, notwithstanding the reported grumbles of Sir Francis Bacon and Sir Patrick Hastings.
9. You will be supported by two very able Deputies in Mr Tan Siong Thye and Mr Lionel Yee, who have each accumulated experience on the Bench and in Chambers. I congratulate Mr Yee on his appointment as Deputy Attorney-General; and also Mr Kwek Mean Luck and Ms Mavis Chionh on their respective appointments as Solicitor-General and Second Solicitor-General.
10. Mr Vijayendran, you take over the reins of the Law Society from Mr Thio Shen Yi. We too have worked together as partners in practice and I have direct

knowledge of your humility, compassion and selfless devotion to service. It is unsurprising that the Straits Times referred to you as the “[p]ro bono champ” when it reported your imminent appointment as President of the Law Society. These attributes will serve you well in your new role.

11. These significant changes at the senior levels of our profession are more than matched by major and unpredictable shifts in the global operating landscape around us. And so with unyielding persistence we must adapt and innovate, lest we be overtaken by a world that is changing ever more quickly in response to the forces of globalisation and technological disruption.
12. This morning I will touch on how and why the legal process must be transformed in response to technology. This is a point to which you have each alluded. I will then speak on some aspects of the work of the Academy of Law in helping our profession move in line with that transformation. And finally, I will touch on some initiatives that our courts are taking towards the broader goal of advancing the administration of justice.

III. Technology and the legal process

13. The nature of the legal process—how lawyers brief cases and how judges decide them—is a question that has long preoccupied legal scholars, judges and practitioners. But today, it is being studied and analysed with intensity by what might seem, to most of us, a surprising group consisting of computer engineers, programmers and data analysts. They use frontier technologies with their own developing jargon, such as big data analytics, deep learning

algorithms and blockchains, all in the hope of transforming and, in many ways, simplifying aspects of the legal process.

14. We have thus far assimilated technology into our work incrementally. We were early adopters of e-filing, e-discovery tools and video-conferencing for hearings; and legal information has been made available online through LawNet, singaporelaw.sg and Singapore Law Watch. But, the fact is that the practice of law has not experienced disruption to the same extent that other industries and professions have. Perhaps this is because technology has only just reached a tipping point, where it can meaningfully be applied to our work. It may also be because lawyers are notoriously resistant to change—perhaps an inevitable characteristic of a profession whose principal function is to uphold an enduring and stable system of rules around which society can structure its interactions.
15. But the day of reckoning can no longer be put off, because dramatic developments will force us to rethink entire areas of practice. Let me give two examples:
 - (a) First, there is the advent of online dispute resolution platforms, whose objective is to allow users to find resolution without having to litigate. These platforms blend negotiation, mediation and arbitration with the generative capacity of artificial intelligence and boast impressive success rates. They have already been deployed effectively in high volume, low value disputes; and a platform designed for matrimonial matters has more recently been implemented in the Netherlands. It is

likely just a matter of time before the same methods are applied in other fields such as motor accident and workplace injury claims, and other insurance claims or disputes.

(b) Another example may be found at the front end of legal work where the open-source philosophy, coupled with data analytics and blockchain technology, can give users access to reliable and readily-accessible standard precedents. This will probably have a significant impact on simple real estate transactions and straightforward employment and procurement contracts.

16. Both these examples suggest that some of the spaces that have traditionally been occupied by lawyers will diminish. But it would be wrong to approach technology as if it is something to be vanquished just because it threatens to disrupt or challenge how we have been accustomed to operate. Technology holds the promise of greater productivity and effectiveness. This should translate to higher quality legal services and cost savings for law firms and, ultimately, for society. Mr Vijayendran, you mentioned some aspects of this when you spoke of your Action Plan. But again, let me give some illustrations:

(a) Predictive technology will make research and discovery less time consuming, more accurate, and almost certainly cheaper than manual research or tedious document review by junior associates.

(b) The ubiquity of video-communications technology will challenge the notion of the court as a geographical space, and increasingly draw us towards thinking of it in terms of cyberspace. In that paradigm,

documents will be retrieved from the cloud at a click and hearings could be virtual.

- (c) Rapid and unbroken information flows will give clients greater access to resources on the law and lawyers. The traditional practice of retainers may fade in favour of a system that more efficiently matches supply and demand, leading to the “uberisation” of legal practice.

17. In my address at the Opening of the last Legal Year, I announced the establishment of the Courts of the Future Taskforce led by Justice Lee Seiu Kin, to undertake a strategic study on harnessing technology to enhance the administration of justice. The Taskforce has submitted its final report, and I have endorsed its recommendation to set up a unified One Judiciary IT Steering Committee and the Technology Blueprint for the courts over the next five years. The Judiciary has historically led the profession in meeting both the challenges and the opportunities presented by technology and we will continue to do so. In keeping with this, the Blueprint proposes various IT initiatives that will be reviewed, revised and updated as necessary by the Steering Committee. We will now be seeking funding to bring these plans to fruition.

18. In the same vein, the Academy today presents its Legal Technology Vision. A copy of the Vision document has been distributed to you, and is also available on the Academy’s website.

- (a) The Vision document is the work product of a committee also chaired by Justice Lee. It was developed following extensive consultation with

stakeholders and industry experts. It presents the Academy's vision for the adoption of Legal Tech and the incubation of a Legal Tech scene in Singapore, and it pulls together the on-going efforts of the Academy, the Ministry of Law and the Law Society.

(b) The Vision document sets out a developmental road map with a four-pronged approach, much of which is expected to take place over a five-year time horizon. Although these are broadly within the policy purview of the Ministry, the Judiciary, the Academy and the Law Society will work closely with the Ministry to realise the Vision.

(i) The first prong is aimed at encouraging the widespread adoption of baseline technologies. This covers such things as office productivity suites, billing systems, practice management systems, and online profiling and communications tools. It is especially targeted at small- and medium-sized practices, which might not have the wherewithal of the large firms to adopt the latest software and computer systems. The Vision identifies examples of viable tools and the ways in which users can get the most out of them.

(ii) The second prong moves beyond the baseline and focuses on enhancements that will streamline and improve the way we practise law. It presents the possibility of collaborative and shared virtual platforms and workspaces, as well as web- and cloud-based tools that can be accessed remotely. It envisages greater public availability of substantive legal knowledge such as precedents and

databases, and anticipates the creation of a virtual marketplace, which will help match the demand for and the supply of legal services, while also providing information and rating tools for the benefit of both lawyers and clients.

(iii) The third prong goes beyond the practice of law and focuses on how the legal sector could link up with innovative professionals from other disciplines to help create fresh legal technologies. This will entail creating framework conditions to promote innovation in the use of technology in the legal industry. It is envisaged that these 3 prongs will be achieved within the next 5 years.

(iv) The final prong has no fixed time frame. It contemplates the creation of an ecosystem in which Legal Tech can flourish; an ecosystem that will be characterised by deep research into novel technology, close and strong connections between entrepreneurs, innovators, engineers and practising lawyers, and access to capital and infrastructure necessary for all of this to flourish.

19. We have much work ahead of us in this effort. This marks for us the start of a long process of constant adoption, evaluation, reassessment, and ultimately, renewal. From an institutional perspective, we will do all we can to encourage the implementation of technology and ease the transitions. But at a personal level, each of us—members of the Bench, Chambers and the Bar—must approach this with the right attitude. We must see this as a time of opportunity,

rather than of adversity, and approach technology and the impact it will have on us with receptive openness.

IV. The Academy

20. As we look ahead to accommodate the changing face of legal practice, we must continue to invest in our lawyers to ensure that they have the skills and competence that will be required of them in the years to come. Two of the Academy's efforts are at the forefront of this.

21. The first is the Legal Industry Framework for Training and Education, which abbreviates to "LIFTED", and which will be implemented in phases in the coming year. This is part of the nationwide SkillsFuture initiative to promote individual personal and professional development. LIFTED will help members of the profession identify and develop core and specialist competencies in their particular areas of practice. Training programmes will be tailored, in collaboration with industry stakeholders, to encourage development, experimentation and innovative thinking in the law and legal technology. LIFTED will also make available tools, such as the LIFTED Learning Planner and companion website, and resources, such as the Academy's e-Lex and ed-VANTAGE media, to enable professionals and those in supporting roles to plan and pursue the relevant training and development.

22. The second scheme relates to specialist accreditation. Even in the brave new world of technology, we will continue to rely on skilled lawyers to bring together that complex tapestry of experience, expertise, judgment, perception and morality that is necessary for a legal system to thrive. The accreditation

scheme is designed to give due recognition to those who are experts in their field of specialisation.

23. The idea of accrediting specialists is not new. I mentioned in my address last year that Justice Quentin Loh had been tasked to lead a committee to look into this, and I am deeply grateful for the thoughtful report that has been submitted to me. I have accepted the committee's recommendations and the accreditation scheme will first be implemented as a pilot for building and construction lawyers. Later, we expect to extend this to other areas: potentially shipping, arbitration and other areas of specialised practice.
24. Applicants who satisfy stipulated criteria and qualify through the assessment process will be accredited. Participation in the scheme will be entirely voluntary and will not be exclusionary. Thus, non-accredited lawyers will continue to be able to practise in their field, in the same way that those who are not appointed Senior Counsel are nonetheless able to practise as advocates. But accreditation will function as a mark of recognition that a particular lawyer, in fact, has particular skills and expertise.
25. It is envisaged that the scheme will provide two tiers of accreditation: one for younger lawyers, and another for senior practitioners. Accreditation will be for a fixed period and will have to be renewed. An accredited lawyer seeking renewal will have to demonstrate that he has continued to be meaningfully engaged in practice in the relevant area of specialisation. The suggestion was made that we should similarly require Senior Counsel to renew their status from time to time, given the number who do not seem to appear in court with

the same frequency once they have been appointed, but we will keep that under review for the moment.

26. Let me digress briefly to mention one other development affecting the Academy. As its activities have continued to grow, it has faced some real demands in terms of operating space. The Academy has therefore procured about 8,750 square feet of space on the 8th floor of the Adelphi. The purchase will diversify the Academy's investment assets and reduce its rental expenditure. This expanded office space will be ready in early 2018 and will enable the Academy to continue its good work.

V. The Courts

27. Let me now turn to some major initiatives that our courts have embarked on and will continue to develop this year.

The Supreme Court

28. At the Supreme Court, our strategic direction continues along two parallel but ultimately complementary tracks, namely, our work on the domestic front and in the international sphere.
29. On the domestic front, we are at the cusp of changes to our litigation procedures that will significantly affect the way in which we try our cases.
30. Criminal litigation will benefit from more deliberated and customised procedures with the proposed establishment of the Criminal Procedure Rules Committee. The Committee will be empowered by the Criminal Procedure Code to make rules governing the conduct of criminal proceedings. With this,

we follow in the steps of some other leading common law jurisdictions that have also introduced similar arrangements. I floated this idea at a dialogue with the Criminal Defence Bar some time last year and it was very warmly received. I believe the creation of the Rules Committee will work to the benefit of both the Prosecution and the Defence, and I am grateful to the Minister for Law and Home Affairs for supporting this initiative. I am given to understand that the amendments to the Criminal Procedure Code to establish the Rules Committee are anticipated later this year.

31. Civil litigation too will receive a major overhaul towards the end of this year as the Civil Justice Commission, under the leadership of Justice Tay Yong Kwang, completes its wide-ranging review of the processes that have become second nature to most experienced litigators. The reforms will simplify and update the Rules of Court, eliminate time- and costs-wasting procedural steps, promote technology, and allow greater judicial control of the litigation process.
32. The work of the Commission has proceeded in tandem with a separate review by the Ministry of Law, which has been considering the question of how the civil justice system can remain affordable, efficient and effective for all who need the assistance of the courts to resolve their legal disputes. The Ministry's proposals, which are under consideration by a separate committee chaired by Senior Minister of State Indranee Rajah, will involve legislative changes that would, among other things, allow judges to play a more active role in civil proceedings and introduce reforms to pre-trial processes and the costs regime.

33. Apart from this broad reconceptualization of the civil litigation process, we have also directed efforts at reforming the procedural rules for specific types of disputes.

(a) In relation to intellectual property (IP) litigation, a committee chaired by Justice George Wei has submitted its recommendations to the Government on how to enhance access to the IP dispute resolution system, especially for less-resourced parties. The Ministry of Law is currently considering the report in conjunction with its broader review on the civil justice system, as well as the work of Justice Tay's Commission.

(b) Second, a committee chaired by Justice Judith Prakash and Justice Belinda Ang has been reviewing the procedures relating to medical litigation, with the aim of encouraging consensual settlement, and streamlining disclosure processes and the use of expert evidence with the assistance of medical assessors. I expect this initiative will be finalised and implemented this year.

34. These reforms to the litigation process form but a part of our endeavour to improve access to justice, which is a subject drawn into especially sharp focus where litigants-in-person are concerned. Here let me mention the Community Justice Centre which has been doing wonderful work at the State Courts since 2012. Following that success, the Supreme Court has collaborated with the Community Justice Centre to establish a satellite office here and I am pleased to announce its official launch today. In the 2 months since its soft launch last November, the satellite office has provided practical support and useful

assistance to many persons involved in bankruptcy proceedings. In time to come, the Community Justice Centre may consider expanding its scope of work.

35. On the international front, the Singapore International Commercial Court (SICC) has seen 6 more transfer cases in 2016. As familiarity increases with its commendable work, there is anecdotal evidence that some international users of litigation services are beginning to adopt SICC dispute-resolution clauses in their standard contracts. I have appointed Justice Quentin Loh as the judge in charge of the SICC to oversee its growing work.
36. We are also refining the SICC's rules, practice directions and guides to make them more user-friendly. This is necessitated by the array of legal traditions that the SICC caters to. It is in this spirit that we launch the SICC Procedural Guide, copies of which have been distributed this morning. The Guide has also been made available on the SICC's website. It serves as a concise tool to familiarise users with the SICC procedures, and provides quick references to the primary material, including the applicable legislation and practice directions. I am sure it will greatly benefit our users.
37. At the same time, we are also widening and strengthening our judicial networks. This is critical because cooperation with courts of other countries will aid in the sensible and effective resolution of sprawling international disputes, which are now commonplace. Of particular note is the judicial insolvency network, which links us with judges from several important centres of corporate law and insolvency, namely, England, New York, Delaware,

Ontario, the Federal and New South Wales courts in Australia, Bermuda, the Cayman Islands and the British Virgin Islands. Judicial Commissioners Aedit Abdullah and Kannan Ramesh led this initiative, which saw us hosting an inaugural conference that resulted in the promulgation of guidelines for court-to-court communication and cooperation protocols. This has been warmly received by our counterparts in many of these jurisdictions and we hope to see their formal adoption by at least some in the coming months.

The State Courts

38. Turning to the State Courts, I will touch on four points that are unified by their emphasis on improving efficiency and effectiveness at the State Courts, which play a central role in the administration of justice in Singapore.
39. First, we doubled the current jurisdictional limit of the District Court in civil claims to \$500,000 for road traffic accident claims and personal injury claims arising out of industrial accidents with effect from 1 December 2016. We did this after a review in which we sought to balance a number of competing considerations, including the desire for early and effective resolution of such claims and containing the costs of such proceedings. The State Courts' pre-filing regime and post-writ management systems will be available to those involved in these cases at the current fee levels applied in the District Court.
40. Second, the Employment Claims Tribunal is expected to begin operations in April 2017. The Tribunal will be established within the Community Justice and Tribunals Division of the State Courts and will give employees an affordable,

simple and expeditious means for resolving salary-related employment disputes with their employers, regardless of their salary levels.

41. Third, construction of the new State Courts Towers is progressing well. The contract for its construction was awarded in February 2016, and the building is targeted to become operational by 2020. We will then have more than 60 courtrooms and in excess of 50 hearing chambers. This represents a 50% increase over the current number of courtrooms, and it will enhance our capacity to cope with an increased caseload as well as improve the delivery of our services to users.
42. Fourth, the State Courts, in collaboration with the Lee Kuan Yew School of Public Policy, will conduct the Executive Leadership Programme for high-performing Court and Tribunal Administrators. This inter-disciplinary programme will help equip those holding leadership positions in the judiciary with skills to manage their courts effectively and efficiently. Its inaugural run will be from 16 to 20 January 2017, and has attracted registrants from various jurisdictions including Australia, Fiji, India, Myanmar, Tanzania and the UAE.

The Family Justice Courts

43. On the family justice front, we have achieved much over the past two years by building an integrated ecosystem comprising judges, lawyers, psychologists, mediators and social workers. We are now examining some specific aspects of our family justice system for refinement, of which I will mention two.

44. First, we are devising norms for child maintenance based on actuarial data on family expenses. This will help improve consistency and cost-effectiveness in cases involving children. Judicial Commissioner Valerie Thean and Mr Gerard Ee, the President of the Council of the Institute of Singapore Chartered Accountants, are jointly leading a committee to study the data and develop a set of norms that will guide these cases.
45. Second, and as you mentioned, Mr Vijayendran, as we continue to develop special procedures for family proceedings, we think it will also be beneficial to spell out professional standards that will apply specifically to family law practitioners who are often placed in a precarious position because of the many competing demands they face. They owe duties to their clients, who are often in difficult, trying and emotionally-charged situations. At the same time, they must constantly be mindful of the welfare of any affected children and on top of this, of course, they owe duties to the court as advocates and solicitors. All of this can present acute challenges and I have asked the Family Justice Courts to work with practitioners to develop clear standards of professional conduct that apply in this particular setting. Their proposals will in due course be raised for consideration by the Professional Conduct Working Group chaired by Justice Steven Chong before it is introduced into the rules.

The Singapore Judicial College

46. The final aspect of the work of the courts that I wish to touch on is judicial training and development. The Singapore Judicial College, since its

establishment two years ago, has made its impact felt both locally and internationally.

47. Aside from the full calendar of professional training offered to judges, the College also promotes an empirical research programme. The College's Board of Governors, chaired by Justice Andrew Phang, has so far approved 7 projects. This morning, I am delighted to announce the completion of the first 2 of these:

(a) The first is an empirical study by Associate Professor Goh Yi Han and Assistant Professor Cheah Wui Ling from SMU and NUS respectively, on the Court of Appeal's citation of academic works. It analyses and evaluates the types of material cited.

(b) The second is a comparative and empirical study by Professor Gary Chan from SMU of defamation cases in the Singapore courts between 1965 and 2015. This seminal work assesses the trends in our courts' use of foreign precedents in defamation cases since independence.

48. The other 5 projects in the pipeline include studies into optimal mediation approaches and trends in international family law cases. These projects will help us to validate our current practices and identify areas for improvement. More information can be found in the brochure that has been distributed. I congratulate the researchers and also express my gratitude to our judges and judicial officers, as well as our colleagues from the 2 law schools for supporting the work of the College.

VI. Senior counsel

49. I have reached the point in my response where I announce the appointment of Senior Counsel.
50. This year, the Selection Committee has decided to confer the title of Senior Counsel on the following persons:
- (a) Mr Edmund Leow, following the completion of his term as a Judicial Commissioner;
 - (b) Mr Kwek Mean Luck; and
 - (c) Mr Francis Ng.
51. I congratulate each of them on joining the highest echelon of the profession and I look forward to their continuing contributions.

VII. Mr V K Rajah: a tribute

52. I want to close this morning's proceedings, Mr Attorney, with some reflections on your imminent retirement from public service on 13 January 2017.
53. You began your career in private practice. For more than 2 decades, you were a much admired and respected advocate. You were one of the inaugural batch of Senior Counsel appointed in 1997. We practised together from 1995 to 2003 and during that time, I had the opportunity to see you at close quarters not only as a great litigator, but also as an innovative thinker about the law, a very successful managing partner and a good friend.

54. As a practitioner, you never lost sight of the ideal that the law is ultimately a public good to be employed to advance humanity. In an article you wrote in 1990, you warned against the profession becoming “a ... business”, and reminded us that the profession is “quintessentially a public service with distinct and critical values”.¹
55. It came as no surprise to those of us who were then at the Bar when you were elevated to the Bench in 2004 as a Judicial Commissioner. You were very soon thereafter appointed a Judge of the Supreme Court, and then a Judge of Appeal. During your time on the Bench, you helmed a number of important committees that have had a significant impact on the profession, including the Committee to Develop the Singapore Legal Sector, where once again we worked together, and the Family Justice Committee.
56. Your jurisprudence has reached most areas of the law. From constitutional law to intellectual property, contract to evidence, equity to procedure, arbitration to insolvency, you have authored decisions that have influenced judges, lawyers and academics here and abroad.
57. You have impacted criminal law and practice in many respects. Presiding over Magistrates’ Appeals and sitting in the Court of Appeal, you developed important principles of criminal procedure, criminal liability and sentencing.
58. It was therefore fitting to see you take on your appointment as the Attorney-General in 2014, after more than a decade of distinguished service on the

¹ V K Rajah, “Reflections on the Impetus for Change and Some Observations on the Internal Tensions Vexing Medium-Sized Firms”, (1990) 2 *Singapore Academy of Law Journal* 177 at p 178.

Bench. In this capacity, you have been widely regarded as a fair and even-handed Prosecutor. Unusually, under your direction, the Prosecution brought an appeal against a sentence which you considered was manifestly excessive.

59. You have devoted yourself tirelessly to advancing the interests of justice throughout your career. There can be no higher calling for a lawyer; and you have discharged it with great distinction. I warmly congratulate you on your many remarkable achievements over the course of more than three decades in the law and on behalf of all of us in the profession, I thank you. I also wish you and your family all the very best for the future.

VIII. Conclusion

60. This brings me to the close of this morning's proceedings. I thank you all very much for your presence. As we look forward to an exciting year ahead, let me, on behalf of the Judiciary, wish each and every one of you a very happy, healthy and fulfilling New Year. Thank you.