

OPENING OF THE LEGAL YEAR 2010
9 JANUARY 2010

RESPONSE OF CHIEF JUSTICE CHAN SEK KEONG

Mr Attorney,
Mr Michael Hwang, President of the Law Society,
Ladies and Gentlemen,

1. On behalf of the Judiciary, I welcome all of you to the Opening of the Legal Year 2010, including our guests from afar: Puan Hasnah binti Dato' Mohammed Hashim, Chief Registrar for the Federal Court of Malaysia, Mr Lim Chee Wee, Vice-President of the Malaysian Bar Council, and Mr Wong Huen, President of the Law Society of Hong Kong. Thank you all for making the effort to attend this morning's proceedings.

2. I also wish to thank the Attorney-General and the President of the Law Society for their good wishes, and their assurances of continued support, which we expect, for our endeavours at all times.

Making Progress

3. The last decade has taught us many lessons on why we must not do things to excess, as they all come to grief eventually. What have we, the Judiciary, learned in the last decade? We have learned the following things:

- (a) how to achieve a balance between the need for efficiency and the need for individualised justice;
- (b) how to maintain an efficient court administration and prevent a backlog of cases from recurring;

(c) that, for litigants and counsel, due process is just as important as the outcome of that process;

(d) how to positively engage the Bar as partners in the administration of justice;

(e) that the rule of law is the polestar of our judicial process and judgments; and

(f) that we need to maintain a corporate culture among the Judges, judicial officers and court staff dedicated to the service of the people.

4. We have built up and made accessible to the public our large corpus of Singapore law through the Singapore Law Reports, LawNet and the many publications that the Singapore Academy of Law and Academy Publishing have produced. Immediately, after these proceedings, we shall launch the new Singapore Law Reports (Reissue) series. We have provided continuing legal education (CLE) through seminars, workshops, and lectures on both general and specialised areas of law practice. A new Institute of Legal Education will be operational by the later part of this year to restructure and improve our CLE. Our website "Singapore Law Watch" is extremely popular with the legal community. By these means, we have increased an awareness of the attractiveness of Singapore law as the law of choice for international commercial contracts, and Singapore as a venue for international arbitration.

5. Our mission is never ending. While much has been done, there are always mountains to climb and obstacles to overcome. Thus, we are still trying very hard to ensure, among other things:

(a) that our sentencing policies and practices are effective and fair and also attuned to the needs of our society in maintaining law and order;

(b) that our judgments will be consistently of a high standard; and

(c) that generally, we will know more law than counsel and not be intimidated by them.

6. I believe the Law Society has done much in the last decade to look after the interests of the Bar, and the Council now seeks a wider role in civil society. But the interests of the profession must be its first priority, as the profession exists to provide legal services. Corporate counsel are indispensable to corporate and financial services. But advocates are indispensable to the courts as independent officers of the court, in the true sense of being a part of the court in administering justice. They must always seek to advance their clients' interests consistent with their duties to the court. It has been observed that counsel appearing in court hearings actually play the role of assistant judicial officers to the court, and that is why there are fewer judges per capita in common law countries when compared with civil law countries. Counsel assist the court in finding the facts and also in applying the law in an adversarial process. This is one reason why we expect the highest standards of ethical conduct and also helpful advocacy in our courts.

7. Mr Hwang has just spoken extensively on the role of the Law Society in the internationalisation of the Singapore Bar, how internationalisation has exposed our laws and legal system to the scrutiny of the outside world, and the role of the Council in having to answer queries and criticisms on these matters. I am glad that the Council is now responding to these issues publicly, unlike in the past.

8. On the subject of internationalisation, I should also say that in the last few years, the Judiciary has met with its counterparts from all over the world at various conferences and seminars. Last year alone, we hosted 46 countries and received 11 Chief Justices on various matters, in particular, in court administration. Many of the changes and improvements that we have introduced in our judicial system were the fruit of such interactions. In the next decade, the Judiciary will continue to make its presence known in the international community of judges in various ways. In this month alone, our judges will participate at two conferences in Hong Kong and Canberra.

9. But, like politics, the administration of justice is local. We must do justice to our people first, according to our own laws and legal processes. We do not claim that the norms and principles that infuse our laws are a model for other jurisdictions, only that they are appropriate and necessary to our own circumstances. As Singapore's well-being as a country and a nation depends on its global links of all kinds with the world, we, the judges cannot ignore universally accepted international legal norms and practices in our decision-making. We are not defensive and diffident about our own situation, and we will continue to apply the law subject to local circumstances.

Superintending the Administration of Justice

10. Coming to domestic matters. First, I would like to acknowledge among us Mr Quentin Loh, Dr Philip Pillai and Mr Steven Chong, who joined the Bench as Judicial Commissioners about 4 – 5 months ago. We are extremely pleased that they have decided to leave a more lucrative career for public service. They will augment the institutional expertise of the Bench with their wealth of hands-on experience in managing legal problems in the corporate and financial services sector. Their judicial contributions, which are already evident from the judgments they have delivered, will ensure the continuance of the highest standard of judicial work within our capability.

11. I turn now to the administration of justice. You have just heard the Attorney-General speak on the tremendous efforts he has made to enable his officers to cope with their work, especially in meeting the demands of the courts and the expectations of the public in criminal prosecutions. The Legal Service has a large share of young legal talent and the entry bar to the service is high. I have no doubts whatsoever that in the next decade Legal Officers will raise the level of their contributions to the administration of justice significantly.

12. Likewise, the quality of litigation and legal services generally will improve. I have mentioned on a few occasions, and I mention it again, that because in the past we required a Second Upper law degree from selected overseas universities, and the NUS law school required high entry requirements for its students, we have today one of the best academically qualified legal professions in the world. Many of these lawyers are now beginning to make their mark in the profession and will eventually

become Senior Counsel, top corporate counsel and Judges of the Supreme Court. So we remain confident about the state of legal services in the next decade, as sustainability of their high quality is not in doubt.

13. We, in the judiciary, are also confident of being able to sustain, or even surpass, the current level of performance and productivity in judicial work. We will continue to simplify and streamline court procedures and processes, and also to divert more disputes away from the courts if they can be resolved in simpler, cheaper and faster ways. In this connection, I read with great interest the leading frontpage report in the Monday edition of the Straits Times on the growth of mediation in Singapore, and how the mediator in one case provided a win-win solution for the parties, who agreed to give up the monetary difference in dispute to a charity. I will encourage my judicial colleagues to use every opportunity in appropriate cases to bridge the parties' differences in monetary disputes in the same way, so that every one – the courts, the parties and the charities – wins.

14. One undisputed success story in the development of legal services in Singapore in the last decade is mediation. The success of mediation in resolving the disputes arising from the Lehman mini-bond “mis-selling” debacle by the Financial Industry Disputes Resolution Centre, FIDReC, shows how valuable mediation is in minimising the financial loss of investors, without having to sue in court. In this respect, I applaud the constructive and selfless role of the many members of the Bar and of other professions in making commercial mediation a success. I understand that in some other jurisdictions, mediation has not taken off because of resistance from the legal profession.

15. The other news item on the same day which caught my attention was how the Hainan Hwee Kuan resolved its leadership dispute, by means of a membership vote rather than through litigation. A member was reported to have advised his fellow members not to go to court every time conflict arises. He said: “The lawyers end up rich, and we are laughed at. Please, don't let this happen again”. There is much wisdom in what he said. People who disagree with one another over privileges, rights and entitlements, especially in connection with the affairs of clubs and social

organisations, should settle their differences through mediation or a membership vote, in the larger interests of the organisation.

16. Some of you may know or have read about “quantitative easing”, a monetary concept which has been discussed frequently in the financial newspapers in the last 12 months. It describes a form of monetary policy to stimulate a weak or sluggish economy. A central bank normally does this by lowering the interest rate to stimulate borrowing for investment or consumption. But when the rate goes down to zero, no further stimulation is possible, except by flooding the market with new money. In the administration of justice, we do the opposite. We don’t want to flood the courts with cases or increase the number of processes for resolution of cases. We have our own version of quantitative easing, as well as a version of “qualitative squeezing”, i.e, squeezing quality out of an already efficient system. Let me give you some examples of both versions.

17. Last year, we issued Practice Direction No. 3 of 2009, which establishes an opt-in framework for electronic discovery, based on limiting criteria such as relevance and proportionality. This is necessary to ensure that all relevant documents are gathered and disclosed in the most efficacious manner as electronic discovery, if left unchecked, will lead to unacceptable costs out of proportion to the usefulness of the evidence. This is still a work-in-progress which will be fine-tuned and upgraded.

18. Next, we are looking into the feasibility of serving court documents directly through the Internet, by way of original service, where we are sure that the party cannot be physically served. Substituted service using electronic media has been endorsed in countries such as Australia, Canada, New Zealand and the United Kingdom. But we do not want parties to waste time and money going through what we know will be futile attempts at personal service. We will continue to study how we can make use of New Media to enhance the administration of justice.

Statutory Reforms

19. Another area, where we will effect “quantitative easing”, is in the number of procedural processes that delay the trial of an action. This entails reducing and simplifying interlocutory processes. The guiding principle will be to limit appeals against interlocutory orders only to cases where they result in the termination of the proceedings or are extremely prejudicial to a party. A Committee chaired by Judge of Appeal Chao Hick Tin will make the necessary recommendations on how to simplify and structure this area of procedural law, so that we will not have cases that take an inordinate amount of time to come to trial.

20. We have also looked into increasing the jurisdiction and powers of the Subordinate Courts, including in particular, to allow them to try all actions for the recovery of money founded in common law, equity or any other written law, subject to their respective monetary jurisdictional limits. Initially, this may lead to more appeals but over time, it will give District Judges and Magistrates the requisite judicial experience in adjudicating on such issues of law, and lead to a saving in litigation costs. We are currently studying the Committee’s recommendations, which will be implemented in due course. This will also reduce the caseload in the Supreme Court.

21. Last year, I spoke about proceedings for contempt of court. The law of contempt of court in Singapore is based on common law and is an anomaly in our criminal justice system, as all our criminal laws are statute-based. Laymen and many lawyers have to read the case law or the textbooks to find out what the law is. Further, punishments for contempt of court are unlimited and at the discretion of the judges, although the courts have exercised great restraint in the past. Putting the law in statutory form will allow potential offenders to know what they can be in for. We should move in that direction. I have requested the Minister for Law to consider enacting such a law, and he has agreed to do so.

Disciplinary Process

22. Last year, we streamlined the disciplinary process to expedite the disposal of disciplinary proceedings. It has yielded several positives. In 2009, Disciplinary Tribunal hearings commenced about 3.3 months on average after their appointment as compared with 4.7 months in 2008 and 3.8 months in 2007. Similarly, it now takes less than 5 months on average for the entire process from referral to report, a marked improvement from that of more than 12 months back in 2007. However, in 2009, 16 complaints have been referred to Disciplinary Tribunals, a substantial increase from 6 cases in 2008, and 8 cases in 2007. You would not be surprised to learn that 14 of these matters involved lawyers from small practices.

Conveyancing Monies

23. On the subject of conveyancing monies, I have been informed that the Ministry of Law has decided, in consultation with all the stakeholders, to introduce a pilot scheme in which the Singapore Academy of Law and the commercial banks will participate to hold such monies. This scheme will allow both vendors and purchasers to decide where they want to put their monies pending the completion of property transactions. The paramount consideration is to ensure the complete safety of clients' monies.

State of Legal Services

24. From Mr Hwang's speech, the Council of the Law Society has done much to raise the profile of the Bar internationally. But the lack of interest of members seeking to serve in the Council is not a good sign for the profession. I do not think this reflects a lack of confidence in the Council, as the Council has shown strong leadership and has been doing good work for the Bar in the last decade. It could be that small law firms feel that the Law Society cannot do much for them. Bridging the divide between the large firms and the small firms is, in my opinion, practically impossible because Singapore is a global financial services centre. Globalisation of trade and services, including legal services, demands bigger and smarter law firms to serve the needs of the new economy. To prosper, lawyers must be able to supply

the services the market needs. Specialised knowledge and litigation skills will always be in demand. The Singapore Academy of Law will work with our two law schools and do what it can to arrange for more courses to cater to those who want to upgrade or enhance their skills.

25. In the coming decade, it is necessary that the Bar must engage itself in continuous self-improvement and renewal, to position the legal profession to meet the challenges that a changing society will pose. Market forces will ensure that the large firms respond appropriately and quickly or they will cease to be large or competitive. A number of venerable firms that prospered during colonial times have lost their bearings through failures in succession planning. Senior counsel should develop a strategic plan to groom young advocates to take their place when they leave the scene. The Bar is in a healthy state today, compared with many of its counterparts in the developed countries. Its current membership holding practising certificates stands at 3,726, the highest number ever in the history of the profession.

26. The Bar has a vested interest in the proper administration of justice, and in this regard it remains a calling for many of its members. But to maintain the practice of law as a calling, lawyers must understand its traditions. One of them is that they must conduct themselves properly and treat each other with basic courtesy and respect, to maintain the dignity of the profession. As Shakespeare said, "...do as adversaries do in law, strive mightily, but eat and drink as friends"¹. Personal criticism of another lawyer's conduct should only be a last resort, and only if fully justified. A lawyer should also always show professional courtesy and respect to the court, and vice versa.

27 In this connection, I am pleased to note that Mr Hwang has confirmed that there has been great improvement in the interaction in court between advocates and judicial officers.

¹ The Taming of the Shrew

Appointment of Senior Counsel

28. I have now reached the more pleasant stage of having to announce the appointment of new Senior Counsel. They are:

- (1) Mr Lim Teong Jin, George
- (2) Ms Suriyacala Jennifer Marie
- (3) Mr Maniam Andre Francis
- (4) Mr Lai Tze Chang, Stanley

Conclusion

29. You would have noticed by now that I have not given you copious statistical information on our caseload, benchmarks and KPIs. One reason is that I have been politely informed that too many numbers have a numbing effect on the listener. But for those who have an interest in the details, please read our Annual Report 2009 which will be published soon.

30. To close these proceedings, let me, on behalf of all the Judges, Judicial Commissioners and judicial officers, wish you all a happy, bountiful and peaceful new year.
