

**OPENING OF THE LEGAL YEAR 2009**  
**3 JANUARY 2009**

**RESPONSE OF CHIEF JUSTICE CHAN SEK KEONG**

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

On behalf of the Judges of the Supreme Court, and the Judicial Officers of the Subordinate Courts, I welcome all of you to the Opening of Legal Year 2009. I also welcome especially our guests from abroad, viz., Mr Rangunath Kesavan, Vice-President of the Bar Council of Malaysia, Mr Rimsky Yuen, Chairman of the Hong Kong Bar Association, and Mr Lester Huang, President of the Hong Kong Law Society and his three colleagues. I thank them for their attendance.

2 I also thank the Attorney-General and the President of the Law Society for their speeches on the issues and problems which beset them last year. These are changing times and their roles as our partners in the administration of justice will not get any easier. I therefore thank them sincerely for their pledges of continuing support for our work in the days ahead.

3 We are now in a global recession which will cause economic and social hardship to millions of people all over the world. Singapore is not spared. We can therefore expect an increase in court filings in the coming months. The courts are ready to deal with them. And, as always, we expect the Bar and the Legal Service to play their part in giving us the support to

manage our caseload in a timely manner.

4 On this annual occasion, we, the Judiciary, renew our pledge to render justice to all litigants. But, given our experience last year, it is necessary to remind ourselves that justice can only be rendered according to law. The administration of justice is about the enforcement and protection of legal rights and interests of litigants vested in them by law. I do not have to emphasise that we, the Judges and Judicial Officers, apply the law impartially: that is a given in our judicial process. Every time a person steps into the courtroom, whether as a litigant or a witness, he expects a fair and impartial hearing from the judge. A fair hearing means allowing both sides the right to speak and be heard. Justice is in the process as much as in the decision of the judge. Every time a judge steps into a courtroom, he is reminded by its aura and the presence of counsel in their robes that he is there to render justice and for no other reason.

5 The mission of the courts requires that its authority be respected by all. This is so fundamental and critical to the rule of law, and the just and proper governance of a state, that the law itself will not tolerate any attempt by any person to undermine public confidence in the courts by making false and scandalous allegations. The courts need to be protected in that regard by the law. It should be remembered that the law of contempt is not created by statute but has always been part of the common law. In this connection, I take note of the efforts of the Attorney-General last year in upholding the authority of the courts in the face of the various attacks against the Judiciary and his resolve to be equally vigilant in that regard in the future.

6 With these fundamentals out of the way, let me now turn to the practical side of the work of the courts in 2008. First, I will have to trouble you with some statistics. Monitoring performance by numbers is essential to

maintain the health of the justice system, such as, in alerting us to emergent trends or problems in increased caseloads, case disposal rates, and other productivity measures. I hasten to add that the pursuit of justice cannot be measured by counting numbers alone. George Gallup, the creator of the Gallup poll, was once quoted to have observed that “*not everything that can be counted counts; and not everything that counts can be counted*”. His observation reminds me of a famous story recounted by Justice Spigelman, Chief Justice of New South Wales, in his speech on measuring court performance. In 1754, an English mathematics prodigy, Jedediah Buxton, was taken to see David Garrick perform in Shakespeare’s *Richard III*. When asked whether he had enjoyed the performance, Buxton replied that the play contained 12,445 words! Actually, Buxton did not miss the wood for the trees: he was simply not interested in the wood.

7 As in the past, we are very much interested and concerned about the qualitative and quantitative aspects of our work. So let me count the trees first as a measure of the Supreme Court’s performance. The performance of the Subordinate Courts will be disclosed later at the Subordinate Courts Workplan in February 2009.

### **Judicial Caseload and Productivity**

8 I start with the judicial caseload. Our overall civil caseload in 2008 was 7,703 cases, about 1% lower than 2007. However, writ actions, the core business of the courts, which take up most of our hearing and trial days, rose from 1,013 filings in 2007, to 1,260 in 2008, a rise of 24%. Significantly, this is the first time that writ filings have increased since 2001.

9 In criminal matters, (including Magistrate’s Appeals), the number of cases filed was 320, an increase of 10% and 39% over 2007 and 2006

respectively. A similar upward trend was seen in the Court of Appeal, where the number of appeals and causes filed at 337 was an increase over 2007 (252) and 2006 (243) by about 34% and 39% respectively.

10 Whilst we had a bigger workload in 2008, we also increased our productivity in 2008 from 1,536 hearing and trial days in 2006 and 1,646 days in 2007 to 1,890 days in 2008, an increase of about 23% over two years, with the same number of trial judges.

11 The Court of Appeal figures show an upward trend in terms of disposal. The number of appeals and causes disposed of in 2006, 2007 and 2008 were 217, 246 and 275 respectively. To these figures should be added the 50% of Magistrates' Appeals and 37% of District Court Appeals heard by the Court of Appeal Judges. These figures must be seen in the context of a forensic environment in which the courts sat longer and heard lengthier arguments of counsel. In 2008, the Court of Appeal delivered 58 written judgments (including 6 decisions of the Court of 3 Judges), more than the 52 judgments in 2006 but less than the 64 judgments in 2007.

12 Last year, we re-organised the allocation of judicial work in several areas to maximise the utilisation of our judicial resources. This is a continuing exercise. For example, all Magistrates' Appeals are heard by two Court of Appeal Judges and a group of High Court Judges with experience in criminal matters. All District Court Appeals are heard by Court of Appeal Judges. More judicial work has been delegated to the registrars, including applications for certain types of ex parte injunctions, applications under the Mental Disorders and Treatment Act and assessment of damages, not only to free up the Judges' time for hearings and trials, but also to expose young Judicial Officers to a greater variety of judicial work.

13 The figures show that these and other measures have borne fruit. Despite the increase in filings, our disposal rate for writ actions has increased from 87% in 2007 to 91% in 2008. With regard to criminal matters, the Supreme Court has maintained a consistent case disposal rate of 92% in 2008 and 95% in 2007, compared to 83% in 2006. We achieved these results despite the progressive increase in filings which I mentioned earlier.

14 We have also surpassed our key performance indicator of having 85% of all writ actions disposed of within 18 months from their commencement.

### **The State of the Bar**

15 Let me now turn to how the Bar fared last year. I congratulate the great efforts of the Law Society in expanding its *pro bono* services last year. Now that this service has been firmly established, the Council may wish to devote its attention to another important problem which has been with us for a long time. I refer to the small law firms. They supply vital and affordable legal services and access to justice to all rungs of society, and it is in the interest of the community that their standards of practice be raised. The vast majority of them are competent and conscientious and many of them view their work as a calling or vocation. Unfortunately, time and again, the few dishonest among them have caused their clients not only financial harm and emotional distress, but also disproportionate reputational damage to the legal profession as a whole.

16 We are aware of the difficulties faced by the small law firms. Basically, they result from having to compete for low income work with insufficient manpower and other resources. Some years ago, the Law Society introduced the concept of group practices to reduce overheads and

increase their areas of expertise. It made a good start and seems to have realised its potential. The Law Society should try to enhance the role of the small firms and at the same time make a sustained effort to reduce the incidence of malpractice in such firms. I accept that it is easier said than done, but the types of professional misconduct that have come before the various disciplinary bodies, including the Court of 3 Judges, should give the Council an idea of what the problems are.

17 Last year, the Court of 3 Judges suspended 4 lawyers, prohibited another 4 lawyers from practice for varying periods of time and struck off 3 lawyers from the rolls. Another 6 are wanted for questioning by the police. Their misconduct ranged from touting, helping their patrons to cheat their own clients, misappropriating clients' monies, and the most egregious of all, abusing their position as officers of the court, to mislead the court by assisting in a fraudulent withdrawal of money which was paid into court for its very protection. Every single one of these cases involved small firms. I should mention that currently all applications to take out money paid into court are heard by a Judge who, if necessary, may require the applicant to produce a certificate of entitlement signed by a Senior Counsel or any appointed counsel.

18 As for the scheme to disallow lawyers from holding clients' monies in conveyancing matters, I hope it can be implemented soon. The large law firms regard the holding of clients' monies as a bane and not a boon, and I agree with them. While the new scheme may cause initially some inconvenience to the public, it is in their interest that their funds be not put at risk, especially if they are unable to obtain full compensation from the Law Society's Compensation Fund. There is, of course, an alternative solution, which is that whenever such a situation occurs, there should be a special levy on all lawyers to make good the losses to the clients. But, this solution

not only creates a moral hazard, it also penalises the large majority of honest lawyers, and those in the small firms more than those in the large firms.

## **Future Developments and Challenges**

19 Let me now speak on future developments and challenges in the administration of justice. There are two broad aspects to this subject: the hardware and the software. By hardware, I refer to the court support systems, IT systems and other electronic wherewithal that courts use to facilitate and speed up the court processes. In this respect, the public, and the Bar can rest assured that we have the expertise, foresight and resources to be ahead of the curve in the use of court technology. In this connection, I am pleased to update the profession that the tender for the development of the Integrated Electronic Litigation System (iELS) has been awarded. We will consult the Bar extensively and expect to continue to rely on the Bar's support and active participation during the development phases of iELS. When implemented, this system will be a quantum leap in providing end-to-end electronic services to all users. It will put us in the forefront in the use of advanced court technology. If you wish to know more about the benefits of iELS, please read the latest issue of *Inter Se*.

20 Apart from this, we will continue to fine tune our civil procedural rules to deal with the challenges introduced by the pervasiveness of IT in the marketplace. We are currently working on a protocol on the discovery and inspection of documents in the face of the exponential increase in the volume of digital documents and e-mails. Where electronic documents are subject to discovery, the cost of retrieving and reviewing such documents in response to a discovery request may be disproportionate to the value of the claim. Likewise, inspection of electronically stored documents may require proprietary software. Currently, copies of electronic documents are routinely

given in printed form. It would be ideal for such documents to be provided in electronic form, to enable the requesting party to search and manage them in an electronic medium.

21 But, it is the software that I wish to talk about. By software, I don't mean the computer programmes used to operate the hardware but the Judges and the Judicial Officers, and the private sector and public sector lawyers who together engage in the administration of justice. Here, I am not concerned with legal services in general, but only those service providers and services that contribute to the administration of justice by and in the courts. There are two developments which may affect civil and criminal litigation for better or for worse in the future.

22 With respect to civil litigation, you have just heard the Attorney-General refer to the award of 6 Qualifying Foreign Law Practice (or QFLP) licences. This development will change the profile and structure of the legal services sector in due course. However, as Chief Justice, I am not concerned with the inevitable redistribution of corporate lawyers and services in the legal service sector that this change will bring about. These and other related consequences are "known knowns" in Rumsfeldian-speak. My primary concern is how it will impact on the administration of justice if there is a large shift from court practice to corporate practice and/or to arbitration. Both these are "known unknowns". Let me now discuss them in a very general way.

23 QFLP firms cannot provide litigation services, but they can provide full arbitration services. If they need litigation services, they will need to engage counsel should their clients wish to go to court. As most and the best of Senior Counsel are in the large Singapore firms, the QFLPs will need to brief Senior Counsel outside these firms. What they decide to do will have

different consequences for the future of civil litigation. One consequence may be the development of a larger and more diversified litigation Bar that will assure legal work for advocates and thereby attract more and better talent to the litigation Bar. It will also provide the public with a greater choice of advocates. That would be a good development for the litigation Bar, and also for the arbitration Bar.

24 Another consequence may be the referral of these disputes to arbitration, where QFLP firms are free to bring in counsel of their choice. This will be good for the development of Singapore as an arbitration hub provided that the arbitrations are held in Singapore. The downside is that it may affect the development of Singapore law as commercial disputes have always been a major component of the work of the Supreme Court. If all these disputes are settled through arbitration, Singapore may become a backwater common law jurisdiction in commercial litigation. Arbitral decisions only settle disputes but do not develop the law as such because they have no precedent value.

25 There are, of course, other scenarios that the Law Society can contemplate. But civil litigation will not fade away, although its nature and subject matter may change. The Forum of Senior Counsel will need to think of how to retain their fair share of litigation work in the new environment, and to encourage young lawyers to practise as advocates rather than as solicitors.

### **The State of the Criminal Bar**

26 With respect to criminal litigation, the Government has published for public consultation a draft of a new Criminal Procedure Code. Over the years, the Criminal Bar has complained that the criminal justice system is skewed against the accused. It is claimed that this has turned away many

lawyers from criminal law work. A well-known criminal lawyer has said, in an interview published in the latest issue of *Inter Se*, “Nobody wants to go to court and lose all the time.” I do not propose to comment on the views of the Criminal Bar, but in my opinion, shunning criminal work is a defeatist attitude and one not worthy of the noble traditions of the Bar – that is, to defend your client as best as you can in whatever circumstances. Even the counsel concerned must admit that he did not lose all the time, and there may be perfectly good reasons why certain counsel lost all the time. But as far as the Judiciary is concerned, we will accord them the time and opportunity to defend their clients. In this connection, I wish to recognise and applaud the work of the Criminal Bar in its efforts to encourage more young lawyers to join its ranks. It is in the public interest that we have a strong Criminal Bar so as to ensure that no innocent accused is convicted.

27        Nevertheless, the current situation is that criminal litigation is much more poorly served than civil litigation in terms of legal representation. Criminal law practice used to have its fair share of legal talent in the past. It was the place to be for a young ambitious lawyer when David Marshall was the undisputed criminal advocate. Today we have only one Senior Counsel and a small number of strong criminal lawyers. Even defendants charged with serious commercial offences are often defended by civil counsel.

28        As you may be aware, the Supreme Court has a scheme called the Legal Assistance Scheme for Capital Offences (LASCO) to provide legal aid to persons charged with capital offences. He is provided with two counsel to defend him. Currently, LASCO has a panel of 218 defence counsel, but we need to enhance it as not all qualify as lead counsel and not all are willing and able to lead when called upon. We have received representations from the Law Society’s Criminal Practice Group that the current honorarium is not commensurate with the amount of work and responsibility involved. Although

it is accepted by the Criminal Bar that there is a *pro bono* element in such representation, I accept that we need to consider whether, in spite of current economic conditions, there is a case for increasing the honorarium for leading and assisting counsel. We will study this.

29 To enable more advocates to be appointed as lead counsel, we have expanded the qualification criteria to include experience in criminal litigation generally, in addition to criminal experience in capital trials only. Further, Senior Counsel will automatically qualify as lead counsel. With this move, I hope that more advocates will volunteer for such cases as part of their contribution to *pro bono* work. Finally, we will also allow advocates with no experience in criminal cases to act as junior assisting counsel to enable them to gain the necessary experience for future appointments.

30 We will also provide more opportunities for young promising advocates to plead before us. The current system of apprenticeship where they appear as juniors without a speaking role does nothing to build their advocacy skills. We will introduce a scheme to appoint junior advocates as *amicus curiae* in Magistrate's Appeals in cases where it is necessary for points of law or issues of public policy to be argued but which have not been properly argued in the court below, and especially in cases where the accused is not represented. The details of this scheme will be made known to the Criminal Bar in due course. I hope young advocates will accept appointment when offered as part of their *pro bono* work.

### **Reaching Out to the Community**

31 Open court hearings are a basic feature of our legal system. The public is free to observe all court trials. The court rooms are neither forbidden

nor forbidding places, but they can create a mysterious atmosphere where strange rituals and exchanges are seen to take place between judges, counsel and witnesses. We have in the past tried to engage the interest of the public in the work of the courts. In March this year, we will open the doors of the New Supreme Court Building to the public over two days to experience an event which we will call "The Living Courthouse". It will be entirely different in nature and scale from previous events like our 2002 Open House. This new outreach event will feature interactive and 'live' displays, such as enactments of court proceedings and even demonstrations of lesser known processes such as seizure of goods by the Sheriff. This is the layman's chance to have his 'day in court', and experience its proceedings, without the attendant fear of being sued, summoned or subpoenaed.

32 In the past few years, the Judges and Judicial Officers of both the Supreme Court and the Subordinate Courts have increased their links with judiciaries and judicial institutions from many jurisdictions all over the world. This policy will continue.

33 In this connection, I should mention that the Supreme Court, the Subordinate Courts and the Singapore Academy of Law will be hosting the third Round Table meeting of the Asia Pacific Judicial Reform Forum ("the APJRF") from 19 to 21 January 2009. This forum was the initiative of the Australian Judiciary and today is a network of Superior Courts and Justice Sector agencies in the Asia Pacific Region. The meeting will be attended by 8 Chief Justices, 2 Deputy Chief Justices and 23 Judges, to discuss issues pertaining to judicial administration, access to justice and case management. The upcoming meeting will review and discuss the various chapters of a publication dealing with judicial reform experiences of the participating countries.

## **Appointment of Senior Counsel**

34 Let me now turn to the subject of Senior Counsel. Last year, the average number of appearances in the trial courts was 11 days per Senior Counsel. In the Court of Appeal, the average appearance of Senior Counsel was just under 1 day. This state of affairs is contrary to the experience in other common law jurisdictions where senior counsel dominate appeal proceedings. However, it is desirable that litigants looking to engage Senior Counsel should know whether the counsel they wish to retain are still active or have retired or are just tired. Accordingly, I will decide, after consulting the Forum of Senior Counsel, on the modalities of disclosing this information on the Supreme Court website, or the Singapore Academy of Law website, or on both.

35 For this year's exercise, the Selection Committee decided to open it to State Counsel and Prosecutors. The Committee also gave consideration to the applicants' contributions to the legal community and beyond in the form of academic teaching, writing, research and committee work for the various law institutions, such as the Singapore Academy of Law and the Law Society.

36 The Selection Committee has decided to appoint four new Senior Counsel. They are:

- (1) Mr Jeffrey Chan Wah Teck;
- (2) Mr David Chong Gek Sian;
- (3) Mr Francis Xavier s/o Subramaniam Xavier  
Augustine; and
- (4) Mr Ang Cheng Hock.

37 I congratulate all of them and would remind them that the appointment comes with certain obligations which the Forum of Senior Counsel will apprise them of in due course.

### **Conclusion**

38 As we leave behind a dismal year, we must enter the new year with some optimism and fortitude, remembering that the best is always in front of, and not behind, us. As far as the administration of justice is concerned, you can rely on us to do our best, and I want to rely on you, each to do your best for those who rely on your services. Let me, on behalf of the Judges and the Judicial Officers, conclude by wishing all of you the best of health and success in your endeavours in the year ahead.