

IN CONVERSATION WITH CHIEF JUSTICE CHAN SEK KEONG
By KWEK MEAN LUCK, SENIOR ASSISTANT REGISTRAR, SUPREME COURT

On 11 April 2006, The Honourable the Chief Justice Chan Sek Keong was sworn in as the third Chief Justice of the Republic of Singapore. Chief Justice Chan shares with *Inter Se* his personal insights on law and life.

THE EARLY YEARS

How did your early years shape your views today?

I was born in Ipoh, the third of five children. My father was a clerk in the Hong Kong and Shanghai Bank. He was a bank clerk throughout his life. When the Japanese Occupation began, my father took his family to Taiping, where my grandfather lived, for safety. I spent the war years in Taiping until 1945 when we went back to Ipoh.

In Ipoh, we occupied two rooms on the second level of a communal house. The building we lived in was a purpose-built garage for motor cars. On the ground floor was space for cars and above were rooms which were presumably for the drivers. Everything from bathrooms to kitchens was communal. Living in a communal house, you learn what it means to share things with other people and to accommodate one another's needs. I came from a very poor background and I never got used to people doing things for me. Self reliance is essential for survival.

My father first enrolled my elder brother and me in King Edward VII School in Taiping before we returned to Ipoh in 1945. But I did not actually start schooling because on the first day when I went to school, I could not find my classroom! I could not speak English and did not know how to find my way around. So I went home. Later, after we returned to Ipoh, my father enrolled my two brothers and me in Anderson School. We were in that group of children who because of the war had missed the normal entry into school at the age of six. I was then almost eight.

Anderson School was then the premier government school in Ipoh. It was the Raffles Institution of Perak and multi-racial in its composition of students. There was a large number of expatriate staff in the school, some of whom were excellent teachers. I had a very happy time in school and made many friends, some of whom I still see every time I return to Ipoh and with whom I keep in close touch. In my school days, we used to mix with everybody. So I am very comfortable with different ethnic groups. I used to visit the homes of my Malay, Sikh and Indian friends and ate their food. It opened up a large variety of cultural and culinary experiences.

These experiences have shaped my philosophy of life and my thoughts on the kind of society we need. I believe that one must try to understand the feelings and the thinking of people who are different from you, whether culturally or socially. So in many ways, about life and people, I do not have strong views. Many of my views are relative to the conditions I find myself in.

I had one of the best Senior Cambridge School Certificate results in the whole of Malaya in 1955 with eight distinctions. I was offered a teaching bursary; it was quite attractive financially, but I did not take it up as I did not want to become a teacher. So I went to the Sixth Form to try to get a place in the

university.

In the second year of the Sixth Form course, my English literature teacher, Dr Etherton, told me that a professor of law from the University of Malaya would be visiting my school to interest Sixth Form students in the new law course his Department of Law was offering at the then University of Malaya in Singapore. Dr Etherton thought I had the sort of mind for Law and advised me to study it. I had no idea what career prospects a law degree offered and I didn't ask. Dr Etherton was one of the best teachers I ever had I trusted his judgment. He is now over 80 years of age.

I went for the interview. The professor was Professor Sheridan. I was accepted into the first batch of students admitted to the Law Department in the University of Malaya in 1957. Later, I learnt that the law degree I was studying for had not been recognised for admission to the Bar, and this led to my first appearance in court as a petitioner.

After I graduated, I went to Messrs Bannon & Bailey in Kuala Lumpur to read in chambers. My pupil master was Peter Mooney (now Dato). He was a conscientious and an excellent pupil master who introduced me to the practical realities of the law. I attended my first court martial in the British army headquarters in Seremban as his assistant. After I had completed my six months pupillage, I could not be called to the Bar as the necessary legislation had not been enacted! After the legislation came out, I immediately applied for a shortening of my period of formal pupillage. The Bar Council of Malaysia objected and R Ramani, a leading advocate and Chairman of the Bar Council appeared personally to object to my petition on the ground that I had provided only one reason for abridgment of time when the relevant provision in the Act referred to "reasons". Fortunately, the petition was heard by Justice H T Ong. He decided that the provision should be interpreted to include only one reason. It was my first important lesson in real life statutory interpretation as opposed to textbook interpretation.

ON BEING A JUDGE

It has been fifteen years since you were last in the Supreme Court. How does it feel being back on the Bench as a Judge?

My first reaction to being back on the Bench is - there is not much difference from when I left in terms of how appeals are heard. Certainly, the hearings are shorter and more disciplined in terms of time. However, I noticed from the first set of appeals I heard that we could do with some improvements in the pleadings on the legal issues.

I noticed one difference in myself from having been Attorney-General for 14 years. I am not able to write and express myself in the same way as I did 15 years ago. I read one of the judgments I wrote 15 years ago and thought I couldn't write in that way today. After 14 years as a legal adviser to the Government, I had got into the habit of writing concisely and going straight to the point. I think I might have lost the knack to express myself in a literary style. Government minutes are written in plain English. Now, I try to use short sentences to capture all my ideas and arguments. I can't go back to my old style, and I am not sure that going back to it is right. I think that Court of Appeal judgments should be expressed in language that a reasonably-educated layman can understand.

Of course, the Bench is different today in another way. There is a change in court culture. Almost all the current judges are from the private sector unlike 15 years ago. They are used to hard work and they get along very well. The camaraderie is very strong. The whole place is alive, especially at our

Wednesday lunches.

Could you share with us some of your life and judicial philosophy?

I sum up my life philosophy in one phrase – “Live and let live”.

As for judicial philosophy, it is different from 15 years ago when I was interested only in the legal issues put before me. I find that what I am really interested in now is to find, whenever possible, a practical solution to the problems that surface to the court, to try to meet the needs of both parties. I no longer like to decide on the law just for the sake of it. This change is a result of my years of work as Attorney-General.

In two company law cases that I heard in the Court of Appeal during my first week back on the Bench, we reserved judgment and suggested to the parties that they should try and resolve their differences before we delivered judgment. I don't know whether the parties will take up the suggestion. I was told that the Court of Appeal has never done this before. It might work, but it doesn't matter if it does not, because we are going to deliver a considered judgment in each case.

From your experiences, what are the qualities needed to make a good judge?

In my tribute to Chief Justice Wee Chong Jin, I referred to the views attributed to Socrates on the qualities of a good judge. A good judge has to have patience, which is a facet of what is called judicial temperament. I think a person either has it or he does not have it. He must not think he knows everything, because he doesn't, and he must be able to listen to both sides. As a judge, you should try to place yourself in the position of the parties and of the counsel trying to argue a case. Then, you will be able to understand a lot more about the case even if counsel fails to persuade you of the justice of his case. As a judge, one should not only listen but intervene to indicate to counsel how he is looking at the case. A silent judge is an unhelpful judge. Counsel want to know – “Am I reaching you?”

Other requisites of a good judge include the ability and desire to learn new things and to have a broad general knowledge of current events. Better still if he has a good knowledge of legal history and legal developments. Judges must read widely. All kinds of experiences are useful to him. Most importantly, he must know what the judicial process is all about, and why fairness and the perception of fairness is critical in the administration of justice. If you take short cuts, you may end up dispensing injustice or giving the perception of it, which affects public confidence in our legal system.

How do you think we can develop good judges for the Judiciary?

This is very difficult. We can teach lawyers the rudimentary skills of judging, but I doubt that we can change his character and temperament. What we can do is probably to identify lawyers who are good judges of fact, of people, of things, and lawyers who have good legal minds. We look at their court performances as lawyers, their intellectual pursuits, their habits, their moral standards, *etc*. I am not sure we can develop good judges through a process of incubation. Good judges are good lawyers with a long and vast experience as advocates. There is nothing like practice to make perfect, even in the law. Good academics can make good appeal judges, but under our judicial system, they would be the exception.

In England, they provide judicial training, but that is more about understanding the broader perspectives of judging. You learn to look at the values of the community. The judicial board in England teaches how minorities think, why certain groups commit more crimes than others, how to avoid language that is sexist or culturally loaded. This is a broader level of training that goes beyond that of the basic judicial functions of fact finding or finding law. In other words, a good judge must understand the culture and habits of the communities that make up a multi-racial society. In Singapore, I would say that all our judges are aware of the cultural and religious sensitivities of our various ethnic groups.

Do you see any difference in the roles played by Subordinate Courts judges as compared to High Court judges?

In terms of decision making, I don't see a difference between a trial judge in the High Court and a trial judge in the Subordinate Courts. Of course, one has a much greater and varied experience of life and the law than the other, but their judicial methodologies, *ie* the way they process evidence and analyse the legal principles and apply the law, is likely to be the same. The only difference is in their jurisdiction and powers. That is one formal aspect in which their roles can be said to be different.

It is often said that the Subordinate Courts are the face of justice for most people since they deal with 95% of the cases. What, for you, are the important areas for the Subordinate Courts judiciary?

In terms of substantive law, the most important areas are criminal law and family law. These are the two areas of law which affect most the lives of the people. People charged with offences are still people and should be treated with some consideration for their plight. People involved in family disputes and divorces are also in need of some sympathy from the judges for their social problems.

In terms of procedural justice, defendants and litigants must be treated fairly by the courts. The face of justice in the Subordinate Courts is the face that the majority of defendants and litigants see. In a court of law, the judge must conduct himself properly. Censure when he must of litigants and witnesses or even counsel, but he should not pass unkind and cruel remarks which are unwarranted and to which they can only suffer in silence. There is no need to talk down to or at them. Litigants must come away from the court with the feeling that even though they lost, they have had their day in court and have been heard. They may not agree, but they know that this is the system, they accept it.

Lawyers also resent it if they are talked down to, but they can talk back. Litigants on the other hand, are intimidated by judges and wouldn't dare to talk back. It helps that we have a generation of Subordinate Courts judges who recognise the importance of not saying more than is necessary in court.

The Justices' Law Clerks scheme was started in 1991 to provide research assistance to the judges. What are your thoughts on the JLC scheme?

I recall raising the subject with Chief Justice Wee in 1985 when I was chairing a working committee to review legal services. I asked him why he had not introduced a justices' law clerk scheme to assist his judges who then were not known for expedition in deciding cases or writing judgments. He replied that he had thought about it but decided not to introduce it as he feared his judges would become

over-reliant on their law clerks (or words to that effect).

Since coming back onto the Bench, I have read many bench memoranda written by them and have discussed their work with each of them, some exhaustively. Generally, they are very good. But, you must appreciate what their roles are. First, they are there to assist the judges by summarising the factual and legal issues and providing research on the law. That is their primary role. Second, the judges must discuss their work with them as that is the only way they can benefit from being JLCs. So I spend a lot of time discussing their bench memoranda with them, just as I did with the legal officers in the Attorney-General's Chambers on their advices when I was there.

From July onwards, I will be giving the JLCs trial work as well as appellate work. This is to broaden the exposure of our law clerks. This way, they can see how counsel conduct their case. Apart from doing it yourself, the only way to learn is to watch how others do it. That way, you can avoid all the mistakes without first having to experience them personally.

Could you share with us your views on developing the law?

When it comes to the development of the law, the Judiciary can only do so in a very small number of areas and in a very small number of cases, which come up very infrequently. The legal issues that have not been decided by some court in another Commonwealth jurisdiction are rare. When hearing cases, judges rely on counsel to feed them with the law and to bring up novel points of law. If counsel fail to do so, the law will remain static. Rare is the case where a judge brings up a novel issue of law, but it can happen. The problem however with this process is that counsel are invariably unprepared and therefore not in a position to help the court. But a well read judge can provide a lot of input to a case where counsel is unable to do so.

It is here that academics can help to identify and expound on the legal issues. Unfortunately, when academics bring up the issues in law journals, it is often too late, although there are cases where academics have discussed judgments under appeal.

When the courts develop the law, they should do so consonant with our national values. Aside from that, it is important that we know whether and how courts in other Commonwealth jurisdictions have dealt with the same issues. The common law has a core of fundamental principles that are or should be the same in every Commonwealth jurisdiction. It is the common law of a family of nations, overlaid with the national characteristics of each member of the family. Today, this process is very easy as we have access to the law reports of the major Commonwealth jurisdictions.

ON LEGAL PRACTICE

How do you see the state of legal practice today?

With the emphasis on economic growth and national prosperity, more and more of our young lawyers are less interested in the law as a vocation. They are more interested in the business side of law. We cannot turn the clock back. But litigation is critical to the health of our legal system and to the vitality of the Judiciary. That is why I would like the litigation Bar to grow and become stronger.

Of course, our litigation Bar is not very large and is rendered smaller by the existence of large firms with large litigation practices. These firms together employ the greater majority of the good litigation lawyers. What this means is that 30 to 60 advocates can end up acting for only one client. This is made worse by the informal retainer system adopted by big business, especially the big financial houses. If two or more large law firms are on their panel of lawyers, 100 advocates could be “conflicted” out by one client. I am not sure what we can do about this. What is also happening is that where counsel from a big firm appears against counsel from a small firm, the chances are that the former is better prepared than the latter, if only because he has more resources at his command. We must try to equalise this inequality of arms and to increase the number of good independent advocates who are not beholden to big business. Theoretically, one answer to that is a split bar. Then everyone has a chance and you can train up a good litigation Bar.

Within the current framework, we are trying to improve the structure for developing more litigation lawyers. For example, we will be instituting a rule in the Supreme Court whereby once a case is ready to proceed for hearing or trial, we will not postpone the matter even for Senior Counsel to find an available date six or nine months down the road out of their packed diary. Otherwise, the top litigators would take all the work and the court has to postpone cases because their calendar is full. This new rule will spread the cases out. Currently, litigants may feel that particular counsel are the best, but it may very well be that others are just as good, if given the chance to demonstrate it.

Do you have any advice to young lawyers in the early years of practice?

To be successful today or in the future as a lawyer, you need to specialise. To be an expert in something means doing the same thing again and again. Even if you are a general litigator, you need to specialise in one or two areas. This means studying everything on that subject. Learn as much as you can about the things you are interested in, and that will stand you in good stead.

I worked really hard in my younger days. I tried to read everything I could about the law. Of course in those days, if you were serious you could actually go through the entire Malayan Law Journal. In law school, my interest was equity and trust. When I came out into practice in 1962, I knew all the cases in equity and trust reported in the local reports. Today the information environment is different. The corpus for Singapore alone may be too much. But in the practice of law, there are ways of learning fast and intelligently. It comes from being able to recognise the risks involved in the course of the actions you take. Conveyancing is one area where you can do it. There are others.

What do you look for in terms of good advocacy in the Court of Appeal?

From my recent Court of Appeal hearings, I find that limiting the time for counsel to argue their cases is a good procedure. It concentrates the mind on the essentials and issues of the case and shortens the hearings. Once counsel are able to identify the critical issues and address them, having regard to the fact that they have already given full written submissions, there is often nothing more that they can say. The judges can then use the extra time that is then available to question counsel on their arguments. Of course, this means the court has to hear many more cases, crammed into a few days. Recently, the Court of Appeal heard eight appeals at one sitting of five days.

Good advocacy is simply about coming to the point. Direct your mind to the critical issues of the

case. The rest is up to the persuasive powers of counsel. In appellate hearings, good advocacy is desirable but not necessary. Ninety percent of it is already in the written submission which the judges can read at their leisure. Good advocacy is useful for trials. It can get you somewhere, but it does not take you far if the facts or the law are not with you. That is why in the US Supreme Court good advocates are those who can put across their points to the court clearly and succinctly in a few minutes, and who can answer questions directed by the court in the same manner.

You spoke in the Welcome Reference of a new chapter in the Judiciary's relationship with the Bar. How do you think this relationship can be strengthened?

At a very basic level, it starts with greater interaction between the Judiciary and the Bar. Hence, I recently attended the Bench and Bar Games in Langkawi.

When the legal profession has problems, I want to understand what they are and see how I can contribute to the solution. For example, when the Law Society was looking for systemic solutions to the problem of some lawyers absconding with clients' moneys, I pointed out the existence of a rule that allowed lawyers to issue cash cheques from client's accounts. This was a potentially dangerous practice. This point was taken up by the Law Society.

There are so many ways to strengthen a professional relationship. Accessibility is an important aspect of improving such a relationship. You can adopt an "open door" policy for leaders of the profession, in this case, the President of the Law Society or leading members of the Bar, such as Senior Counsel, so that they can inform you of any problems or difficulties the Bar faces. If there are problems, the most effective way to solve or resolve them is to meet, discuss and do it together, in the first instance.

Inter Se thanks Chief Justice Chan Sek Keong for granting Inter Se this interview and congratulates the Chief Justice on his appointment.