

## **OPENING OF THE LEGAL YEAR 2012**

**6 JANUARY 2012**

### **RESPONSE OF CHIEF JUSTICE CHAN SEK KEONG**

Mr Attorney,

Mr Wong Meng Meng SC, President of the Law Society

Members of the Bar

Ladies and Gentlemen,

1 On behalf of the Judiciary, I welcome you all to this morning's ceremony to open the new Legal Year. I also welcome the Chief Registrar of the Supreme Court of Brunei, Pengiran Hajah Rostaina binte Pengiran Haji Duraman; Mr Lim Chee Wee, President of the Malaysian Bar Council; Mr Kumar Ramanathan SC, Chairman of the Hong Kong Bar Association and Mr Junius Ho, President of the Law Society of Hong Kong, and distinguished guests from other Commonwealth jurisdictions. We thank you all for being present here to participate in this annual tradition.

2 On this occasion, we need to remind ourselves that we live in an imperfect and unequal world and all of us here who are involved in the administration of justice should do our utmost in achieving fair and just outcomes for litigants according to law. In this connection, I wish to thank the Attorney-General and the President of the Law Society for their assurances of their fullest support and co-operation for our endeavours in the coming year. I regard these assurances not as mere platitudes uttered only on this occasion, but as vows of a calling. I also take note of the kind words and praise that the Attorney-General has expressed in respect of the

contributions of Justice Kan Ting Chiu to the administration of justice in Singapore. We share in these tributes to him, and we wish him a stress-free retirement.

3 At last year's OLY, I spoke on three main topics: (a) the state of criminal practice and the Criminal Bar, (b) the problem of missing clients' monies in conveyancing matters, and (c) the need for a larger pool of expert litigation counsel to represent consumers and investors, especially in advising and representing them in important financial or commercial claims against big business in Singapore. I am happy to note that all these concerns have been looked into and certain measures will be taken to alleviate some of these problems, as you have just heard from the Attorney-General and the President of the Law Society. I would like to add a few more observations on these and other matters.

#### **The state assigned counsel scheme – "LASCO"**

4 The Law Society has worked with the Supreme Court Registry in making structural changes to LASCO, the acronym for the state assigned counsel scheme, in order to improve the quality of representation in capital cases. We have constituted a LASCO Selection Panel, whose members include Senior Counsel and members of the Criminal Bar, to provide a more rigorous emplacement and assignment process for counsel to lead in LASCO matters. We have increased the honorarium payable to counsel, but not to market rates. We must not forget that many of the defendants concerned would not be able to afford what is being paid as honorarium to the two assigned counsel under the scheme. The value of LASCO is not in the honorarium but counsel's services. I am glad that many LASCO volunteers have spoken out publicly that the motivation for their efforts is not the honorarium but the personal satisfaction of providing the best possible defence for their clients, with the added sense of achievement if their clients are acquitted or the charges are reduced. While the number of qualified counsel on the Panel is certainly important,

the quality of counsel is even more crucial. In this connection, I would urge the Senior Counsel Forum to persuade its members to play a greater role in LASCO and also in the Law Society's own pro bono scheme, ie, CLAS. As Senior Counsel are, by definition, the elite of the profession, it is only right that they take the lead in accepting pro bono work. For that reason, I am also mulling over whether to make prior pro bono representation in criminal matters another criterion for future appointments as Senior Counsel. I will seek the views of my Judges and the Law Society on this matter.

### **Pro bono work**

5 Mr Wong referred to the American Bar Association's recommendation of 50 hours of pro bono work every year for its members, and has suggested that global lawyers based here might wish to make cash donations in lieu of their domestic pro bono obligations.<sup>1</sup> But, before we ask others to contribute, the Bar has to lead by example. In this regard, I am glad to note that, among other initiatives, the Bar has in 2011 contributed about \$127,000 to the Law Society's pro bono programme, CLAS, of which \$76,000 came from the larger law firms. But the latter group of firms can surely do better, considering that the Law Society managed to raise more than twice that sum at its 2011 Charity Golf Tournament. With their lucrative corporate and civil litigation practices, these firms sit atop of Singapore's wealth pole (to use the caption of a Business Times report published in its Christmas eve edition). They are among the greatest beneficiaries of our laws and legal system. In corporate law firms, lawyers can only "eat what [they] kill". As pro bono work brings nothing to the dinner table, one can understand why young aspiring corporate lawyers would be reluctant to do pro bono work. They can be encouraged to do so if management provides them with an incentive, such as crediting their pro bono work with a notional income

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<sup>1</sup> Speech of the President of the Law Society at the Opening of the Legal Year 2012, Singapore Law Gazette, January 2012, [http://www.lawsociety.org.sg/president\\_message/President\\_Message\\_for\\_Jan\\_2012.pdf](http://www.lawsociety.org.sg/president_message/President_Message_for_Jan_2012.pdf) (accessed on 13 January 2012) at p4.

based on what they would have earned for the firm at their normal charge-out rates. Perhaps, law firms that are large enough might even consider setting up pro bono departments, as some American law firms have done. This brings to mind another thought: the Law Society might wish to consider publishing an annual pro bono league table, like in the US. This will enable the public, clients, law students and the legal community to know the rankings of law firms in terms of giving back to society.

6 I am also glad that Mr Wong has provided clarity to the meaning of pro bono.<sup>2</sup> It is not just free work, but free work for our poor “neighbours” without expectation of any kind of material reward – it is the work of the Good Samaritan. It is not free work provided to clients or even to the Council of the Law Society or the Singapore Academy of Law (“SAL”).

7 For many lawyers, pro bono as a social value does not come from nature, but from nurture. In the past decade, there has been an increasing awareness of this in some developed jurisdictions. In 2005, the American Bar Association revised its accreditation standards for US law schools to require that “[a] law [school] shall offer substantial opportunities for ... student participation in pro bono activities”.<sup>3</sup> As of 2011, 21 US law schools have made pro bono work a graduation requirement.<sup>4</sup> In the United Kingdom, a very recent report prepared by the Solicitors Pro Bono Group showed that as of 2010 “at least 61% of all law schools are now involved in pro bono

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<sup>2</sup> Speech of the President of the Law Society at the Opening of the Legal Year 2012, Singapore Law Gazette, January 2012, [http://www.lawsociety.org.sg/president\\_message/President\\_Message\\_for\\_Jan\\_2012.pdf](http://www.lawsociety.org.sg/president_message/President_Message_for_Jan_2012.pdf) (accessed on 13 January 2012) at p4.

<sup>3</sup> American Bar Association, <http://apps.americanbar.org/legalservices/probono/lawschools/introduction.html> (accessed on 13 January 2012).

<sup>4</sup> American Bar Association, [http://apps.americanbar.org/legalservices/probono/lawschools/pb\\_programs\\_chart.html](http://apps.americanbar.org/legalservices/probono/lawschools/pb_programs_chart.html) (accessed on 13 January 2012).

activity”, as compared to 46% in 2006 – an increase of 33%.<sup>5</sup> Australia, following the example set by Canada, has also made great strides in fostering student pro bono involvement.

8 We should not fall behind these jurisdictions. The Singapore Institute of Legal Education (“SILE”) has proposed, and our two law schools have agreed, to establish a mandatory pro bono programme for LL.B. students from the academic year 2013. A dry run of the programme will be carried out this year. SILE and the SAL will provide funding to start and sustain this project for three years. For foreign qualified students, they will also have to complete pro bono modules either in Part A or Part B of their qualifying exams. I should add that Singapore Management University (“SMU”) J.D. students are required to perform 50 hours of community service attachment at a Voluntary Welfare Organisation or an organisation involved in pro bono and legal aid work.

### **Clients’ monies in conveyancing matters**

9 In August 2011, the Ministry of Law established a statutory scheme to prohibit conveyancers from holding conveyancing monies in clients’ accounts. Clients have been given three choices as to how to safeguard to their funds, at different costs – (a) the setting up of conveyancing accounts with prescribed banks and for payment out from these accounts to be signed by the lawyers of both parties, (b) the payment of monies to the SAL to hold as stakeholders, and (c) the payment of monies to a special escrow account. It is rather unfortunate that the scheme requires the public to incur additional fees. Conveyancers can earn the goodwill of the public by absorbing these fees. Otherwise, the public will be seen to be paying such fees in

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<sup>5</sup> LawWorks, LawWorks Student Pro Bono Report 2011  
<http://www.lawforlife.org.uk/data/files/lawworks-student-pro-bono-report-2011-347.pdf> (accessed on 13 January 2012) at p4.

order to protect the reputation of the Bar. Since this scheme was introduced, there has been, to my knowledge, no reported case of lawyers stealing conveyancing monies. However, until experience shows that the system is watertight, the Law Society must remain active and vigilant in conducting surprise checks on all law firms. After all, law firms hold clients' funds from other sources as well. It is my hope that next year, we can celebrate 2012 as the first misappropriation-free year in the (recent) annals of conveyancing. The lesson to be learnt from this statutory scheme is that when it comes to safeguarding clients' monies, the Law Society must act in the public interest, without favour to or in fear of its members.

### **Greater diversity in quality legal representation**

10 This year will see the revival of the Singapore Circuit – not the Singapore Grand Prix – but something older which was sidelined by the need to grow our own pool of expert advocates. We now have a sizeable pool of Senior Counsel who provide advisory, arbitral and litigation services to offshore and onshore clients. However, experience has shown that their services may not be available to the general public in times of need. We have a very large financial and business sector in terms of contributions to our GDP – it grew from 24.4% out of a nominal GDP of S\$158.1 billion in 2002 to 25.9% out of a nominal GDP of S\$303.7 billion in 2010. But, the legal services provided to these sectors are dominated by a small number of large law firms. The result is that the best litigation counsel are usually conflicted out of advising or acting for claimants against big business as they are mainly concentrated in the large firms. So we need a greater diversity of expert counsel to advise, negotiate and pursue legitimate claims in court. This is not a new problem. The Ministry of Law has consulted the Law Society and the Senior Counsel Forum on the best way forward. We can expect amending legislation to be enacted this year. The Bar can rest assured that this will not be a free for all. The courts will admit ad hoc expert counsel on the basis of need, and not simply because a litigant can afford to pay. We do not want to disadvantage litigants who cannot afford equivalent

representation, nor do we want to impede the nurturing of our own Senior Counsel. So, ad hoc admission will be on a case by case basis, with the court doing a judicious balancing of competing interests in each case.

### **Mandatory Continuing Professional Development**

11 As the Attorney-General has mentioned, this year will also see the introduction of mandatory continuing professional development (“CPD”) to assist our lawyers in updating their legal knowledge in both the traditional and emerging areas of practice.<sup>6</sup> SILE will implement CPD in phases, starting with younger lawyers who have less than 5 years of practice. The success of this scheme lies very much in the attitudes of those who have to take the courses. But the Bar is fully aware that the profession will become even more competitive in the future as the Asian economies continue their anticipated growth. CPD will not necessarily make lawyers more competitive, but at least it will make them aware of the latest developments in the law and, hopefully, raise the quality of law practice generally.

### **Plea bargaining**

12 You have just heard from the Attorney-General that he has had extensive consultations with stakeholders on plea bargaining, which he has referred to, euphemistically, as “consensual negotiated outcomes in criminal proceedings”.<sup>7</sup> The Criminal Bar has an important role in obtaining the best outcome for their clients, and the Prosecution has to ensure that the public interest is not prejudiced by too ready an attitude to dispose of cases quickly. The courts are certainly in favour of plea

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<sup>6</sup> Speech of the Attorney-General at the Opening of the Legal Year 2012, [http://www.agc.gov.sg/documents/AGC\\_Press\\_Release\\_06-Jan-12.pdf](http://www.agc.gov.sg/documents/AGC_Press_Release_06-Jan-12.pdf)> (accessed on 13 January 2012) at para 19.

<sup>7</sup> Speech of the Attorney-General at the Opening of the Legal Year 2012, [http://www.agc.gov.sg/documents/AGC\\_Press\\_Release\\_06-Jan-12.pdf](http://www.agc.gov.sg/documents/AGC_Press_Release_06-Jan-12.pdf)> (accessed on 13 January 2012) at para 5.

bargaining in order to reduce wastage of resources all round, but the disposal of prosecutions by this means must satisfy the requirement of public interest.

### **Relationship between the Bench, Bar and the Attorney-General's Chambers**

13 The working relationship between the Bench, Bar and the Attorney-General's Chambers has been excellent in the past few years. I trust it will continue. I am happy to note that the Bar and Prosecution have, on their own initiative, started collaborative projects such as (i) a Joint Code of Practice and (ii) a Pamphlet of Rights, which provides information about the rights of accused persons and victims in a neutral manner. This is a positive development for our criminal justice system. At the inaugural Criminal Law Conference last year, the Vice-President of the Law Society, Mr Lok Vi Ming, has expressed the hope that our criminal justice system would "evolve [into] the most just, compassionate and accessible criminal justice landscape possible"<sup>8</sup>. We share this vision, but always bearing in mind these goals must be consonant with the greater public interest in maintaining law and order. This collaborative spirit will help to facilitate the smooth operation of the mutual discovery scheme for cases under the Criminal Procedure Code 2010.

### **Implementation of E-Litigation**

14 This year we shall be able to implement a state of the art integrated electronic litigation system, or E-Litigation, as the successor to the Electronic Filing System ("EFS"). The EFS has projected our courts as a global leader in harnessing the power of information technology in our litigation process. But today every developed legal jurisdiction has some form of electronic system, some with multiple capabilities. So, we need to move ahead. Not unexpectedly, we encountered many problems of a

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<sup>8</sup> Welcome remarks by the Vice-President of the Law Society, Mr Lok Vi Ming SC, at the Criminal Law Conference, October 2011.

managerial and technical nature which the project group believes it has successfully overcome. E-Litigation will be more efficient and user-friendly to consumers, and should provide the litigation Bar with more features, but without substantial increases in court fees. As no new technological system is bug-free, I seek the indulgence of the Bar and court users to be patient and work through any initial teething problem. Once the system is stabilised, I am confident that there will be exponential gains in productivity all round.

### **State of Legal Services in Singapore**

15 Before I close today's proceedings, I would like to say a few words to complement what the Attorney-General has said on Singapore as a legal services hub. We have been able to establish ourselves as a regional hub for international legal services because of sound policies supported by a strong legal community. The most recent example of how sound policy can enlarge our legal services footprint is the impressive growth of international arbitration in Singapore. As a legal services hub, we are not in the same league as London or New York, but we will continue to grow as we have good governance, an efficient and responsive legal system, adequate legal and judicial services and the Rule of Law – all the prerequisites for growth in the most dynamic economic region in the world. As for the Rule of Law, the SAL has just posted on its website a notice that it, together with our two law schools, will hold a symposium on the Rule of Law on 14-15 February 2012. The Rule of Law is not merely a powerful idea – it is the bedrock and foundation of any modern and civilised society. There will be prominent speakers on various aspects of the subject and you are invited to sign up for the symposium and engage them and other scholars during the panel discussions. This promises to be a lively event.

### **Appointment of Senior Counsel**

16 This year, the selection panel has appointed three Senior Counsel. They are (1) Mr Kannan Ramesh, (2) Mr Aedit Abdullah and (3) Professor Yeo Tiong Min, who will be our first *honoris causa* appointee. I congratulate them on their appointments.

### **Conclusion**

17 This brings today's proceedings to a close. On behalf of the Judiciary, let me thank you for your presence, and let us leave here with mutual wishes, and hopes, that 2012 will be an even better year than 2011 for the legal community.