

RESPONSE BY THE HONOURABLE THE CHIEF JUSTICE AT THE OPENING OF THE LEGAL YEAR 2008

Supreme Court Auditorium, 5 January 2008

Mr Attorney, Mr Michael Hwang,

On behalf of the Judges and Judicial Officers of the Supreme Court and the Subordinate Courts, I thank you both for your pledges of support for the Judiciary in the new legal year. It is only with the support of the legal profession and the Legal Service officers that we, the Judiciary, are able to discharge our judicial functions to our optimal capability.

2 I also wish to thank all others present here for your kindness and interest in attending this annual ceremony when we, the Bench, the Bar and the Legal Service, re-dedicate ourselves to the noble cause of justice. On our part, we will continue the best traditions of judges to hear and resolve disputes in a fair and impartial manner, and on your part, we hope that you will continue the best traditions of the Bar in presenting your clients' cases in an ethical and professional manner. Respect for the law and the legitimacy and moral authority of the courts in determining the rights and obligations of litigants in civil matters, and the guilt or otherwise of accused persons, can only be secured if the public has confidence in the fairness and correctness of our decisions. The primary role of the Bar and the public prosecutors is to work with us to achieve these goals.

3 Before proceeding further, I would like to congratulate Mr Michael Hwang on his election as the President of the Law Society. He has an unrivalled experience in court work and international arbitration that will be an asset to the Law Society in expanding the regional reach of its members.

4 He follows in the footsteps of Mr Philip Jeyaretnam, one of the longest serving and most effective presidents the Law Society has ever had. Philip has done much for its members to reach out to the public and also to raise the domestic and international profile of the Law Society. It was therefore only appropriate that he personified the legal profession last year when the Law Society hosted the hugely successful International Bar Association Conference. In the December 2007 issue of the Law Gazette, Philip penned his last message to his members, a ritual he says he will miss. I am sure that many of us will also miss his monthly ruminations on the state of the legal profession and matters affecting its interests. No doubt Michael will continue this excellent practice which was initiated by the late Mr R. Palakrishnan.

WORK OF THE COURTS

5 It has been customary for the Chief Justice on this occasion to give an account of the work of the courts in the past year, and to highlight our performance. This practice is desirable, for two reasons. First, the Judiciary is accountable to the community and the State in the proper discharge of its judicial functions. They are the real stakeholders in the proper

functioning of the judicial system and are therefore entitled to an annual report on the state of the administration of justice in Singapore. Secondly, the duty to account itself acts as an effective check against judicial complacency or inefficiency. It concentrates our mind to strive to do better each year than in the year before.

6 The yearly performance of the courts is measured for our efficiency and productivity. However, in the past 20 months, my judicial colleagues and I have accorded equal, if not more, attention to the imperative of a just outcome in each case. Justice is an abstract ideal, but in practical terms it is merely the aggregation of all the just outcomes in court disputes. Timeliness in compliance with court processes and in the disposal of cases will ensure that no injustice can be caused by delays in court trials. But, every case has its own time requirements, depending on the complexity of the factual or legal issues and the relevant policy considerations the court may have to take into account. Those of you who have appeared in our courts would have encountered a new experience in the forensic environment in the past 20 months, one in which counsel are given adequate time to complete their arguments. This calls for a delicate balance of judicial patience and judicious assessment of the use of judicial time in each and every case.

Court technology

7 We possess an electronic litigation system that is the envy of many foreign judiciaries. Every year we receive visits by our counterparts from many jurisdictions. For the same reason, we also receive many invitations to attend and speak at international conferences on how to use technology to modernise court systems and procedures to promote greater efficiency in court administration. We have also developed a case management system that, in combination with our IT systems, is able to tell us daily the availability of trial dates, compliance with timelines, current clearance rates, the number of reserved judgments and how long they have been reserved, etc. All this timely information ensures that any kinks and black holes are detected early so that remedial action can be taken immediately. In short, it enables us to always be on top of our work.

8 Last year, the Supreme Court implemented Phase 1 of “ACES” (Applications and Cases E-Management System) which covers writ actions. When fully implemented, this system will provide the Registry with real-time information on the progress of every case, so that we can intervene “just in time” to ensure compliance with the prescribed timelines at each stage of the litigation process. I hope that the implementation of this system will induce or motivate litigation lawyers to assume greater personal responsibility in managing their cases so that we do not need to intervene too frequently. If this state of affairs comes about, there will be less need for pre-trial conferences, and for “unless orders” which are blunt coercive tools. We would prefer to have cases proceeding at an acceptable pace driven by the parties themselves.

9 We are working actively with our technical advisers on the implementation of an Integrated Electronic Litigation System (or “iELS”) to replace the existing Electronic Filing System (“EFS”). The emphasis will shift from the document-centric model to a paradigm that deals with

information, and that flexibly re-uses that information. This will be made possible by an integrated platform that allows for template-based filing, due-diligence checks, case and data validation, and resource and case management. These improvements are intended to create a transparent, seamless and secure operating environment for law firms, litigants and the courts to interact with each other. The iELS will take our court technology to an even higher level of sophistication and efficiency in case management.

Clearance rate of judicial matters

10 Let me now turn to the performance of the Supreme Court in 2007 as compared with 2005 and 2006.

11 The total number of all civil and criminal actions (including appeals) filed and disposed of by the Supreme Court in the last 3 years was, in that order:

2005 - 9,323 versus 8,989, giving a disposal rate of 96.4%
2006 - 8,792 versus 8,938, giving a disposal rate of 101.7%
2007 - 8,046 versus 8,319, giving a disposal rate of 103.4%.

This rate of clearance ensures that no backlog of cases can occur.

Quality of Justice

12 Next, I will refer briefly to the quality of justice. Public confidence in the administration of justice and the rule of law depends very much on the quality of justice dispensed by the courts. Justice for a litigant means a just judicial outcome for his claim or defence. In criminal prosecutions, it is the conviction and just punishment of the guilty. Judicial outcomes are expressed in the decisions, rulings and orders of the courts, and their legitimacy and validity are measured by the quality of their fact finding and legal reasoning. It is imperative that judges must be able to explain their factual findings in ways that the public can understand and legal rulings that lawyers can follow. Our decisions and judgments are open to public scrutiny. While we recognise the need to maintain the efficiency of the civil justice system, we must ensure that justice is done in every case. Consequently, we are also taking more time to examine legal issues in greater depth, and this has resulted in longer and more comprehensive judgments. We also wish to raise the stature of our decisions in the common law world, and hope that this will be a positive factor in promoting Singapore as a legal services hub.

CRIMINAL JUSTICE

13 Crime and punishment have always been the focus of public attention. Hence, criminal justice is the most visible aspect of our legal system and judicial sentencing is the most favoured subject for public comments and criticisms. In this connection, we have been paying close attention to this aspect of criminal justice. The guilty have to be punished in accordance with their culpability in the context of the nature of the offence. But each sentence should serve an objective, whether it is

retribution, deterrence or rehabilitation. We must try to strike a balance between the public interest in maintaining law and order and the principle that offenders should not be punished beyond what they deserve. For this purpose, prevailing societal norms and values will have to be taken into consideration.

14 In this connection, the Sentencing and Bail Review Panel has made considerable progress in formulating the sentencing guidelines for the most common offences that come before the courts, viz. offences against property and offences affecting the human body, particularly where harm is caused by negligence. The Panel meets regularly to review and set the sentencing benchmarks. Our objective is to formulate coherent and rational sentencing guidelines to achieve consistency and fairness (including proportionality) in sentencing convicted offenders. This is not an easy task as sentencing must take into account the individual circumstances of each offender. Nevertheless, sentencing guidelines are crucial to the goal of achieving a substantial degree of consistency in sentencing.

15 We continue to pay close attention to the work of the Community Court which has been given broader sentencing options and a special mandate to give practical expression to the rehabilitative principle within the criminal justice system. It has done well at the front-line of criminal justice and will continue to work with its partner organisations to provide post-sentence therapeutic, psychiatric and rehabilitative programmes. Feedback on these efforts has been positive. Its next step is to expand and refine its sentencing options. Towards this end, the Inter-Ministry Committee on Community-Based Sentences has been reconvened to explore ways to strengthen and supplement currently available sentencing options, so as to better facilitate the rehabilitation and re-integration of offenders into society.

Magistrate's Appeals

16 The number of Magistrate's Appeals has increased since 2005. The number filed in 2005, 2006 and 2007 was 55, 133 and 196, respectively. The increase may appear high in percentage terms, but is not significant in absolute numbers, considering that the Subordinate Courts disposed of about 5,000 criminal trials in each of these 3 years. We have to recognise that offenders have a statutory right of appeal which they are free to exercise to test the correctness of the verdict or sentence in each case. The Public Prosecutor has the same right. In this respect, I may add that both offenders and the Public Prosecutor have filed more appeals in 2006 and 2007 than in 2005. No offender whose liberty is at stake should feel deterred from exercising his right of appeal, just as the Public Prosecutor, as the guardian of the public interest, should appeal against verdicts and/or sentences that he considers wrong or inimical to the public interest. But I trust that members of the Criminal Bar will discharge their functions responsibly and advise their clients against hopeless appeals. We are monitoring this development and will take corrective action, if necessary.

17 I have the sense from reading press reports that there is a preference to report successful appeals against convictions and sentences and not dismissals as they are more newsworthy. This might give the impression that the courts are inclined to be soft on crime and criminals. I

would like to stress that our statistics do not support any such impression. In 2007, we disposed of 195 Magistrate's Appeals. We dismissed 94% of appeals against conviction as against lower dismissal rates of 87% in 2006 and 92% in 2005. With respect to appeals against sentence, 63% were upheld as compared with 59% for the combined period of 2005-2006, up 4%. The proportion of sentences that was enhanced or reduced has remained about the same, 12% and 23% in 2007 as compared with 13% and 25% respectively for the combined period of 2005 and 2006. In addition, the High Court has raised the sentencing benchmarks for certain categories of offences.

CIVIL JUSTICE

18 I now turn to civil justice. Last year I spoke about our benchmark target of 18 months, to complete 85% of all writ actions filed in a given year. I am pleased to state that the Supreme Court was able to achieve this target last year.

19 In relation to productivity, the number of civil actions filed and disposed of in the High Court in the last three years was, in that order:

2005 – 8,393 versus 8,120, giving a disposal rate of 96.7%
2006 – 7,775 versus 8,003, giving a disposal rate of 102.9%
2007 – 6,954 versus 7,206, giving a disposal rate of 103.6%.

Last year, the Court of Appeal also sat more frequently and disposed of more appeals. The number of civil matters filed and heard by the Court of Appeal, in that order, was:

2005 – 147 versus 156, giving a disposal rate of 106.1%
2006 – 152 versus 124, giving a disposal rate of 81.5%
2007 – 160 versus 164, giving a disposal rate of 102.5%.

The high clearance rate in the Court of Appeal in 2007 was achieved in spite of the Court of Appeal allowing counsel more time to complete their oral arguments and to deal with the issues on appeal in a greater depth. The drop in 2006 was contributed to by a spike in the number of appeals filed at the end of that year.

Access to Justice

20 Every person has access to our courts, but not all have meaningful access to justice as legal representation costs money. Moreover, court processes are often beyond the understanding of the ordinary layman. Everyone has legal rights, but not all have the means to enforce or protect them. Meaningful access to justice is a problem in all developed societies. In this respect, I am pleased to note that the pro-bono scheme introduced by the Law Society to augment the state-funded legal aid scheme has taken off successfully.

Conditional fees

21 In this connection, the introduction of a conditional fee regime, as

distinguished from a pure contingency fee regime should provide greater access to justice. Hence, I support the recommendation of the Committee to Develop the Singapore Legal Sector, chaired by Judge of Appeal V K Rajah, to implement such a scheme. The concept of contingency fees has been eschewed by policy makers because of its potential to create mischievous and vexatious litigation, to facilitate over-charging by lawyers, and to erode professional ethics and standards. However, I believe that a properly regulated conditional fee scheme can avoid these evils and give access to persons with meritorious claims but who cannot afford to protect or pursue them, and at the same time discourage opportunistic, unnecessary, and wasteful claims. The financial stake in the probable success of the litigation is a powerful motivation for counsel to take on such claims and bear part of the financial risk of failure. Different models of conditional fee arrangements have been introduced in the UK, Australia and New Zealand. It is, of course, prudent to proceed cautiously, but we should implement the scheme with our customary efficiency. A proper conditional fee system will make access to justice even more meaningful.

Professional ethics and clients' money

22 Let me now say a few words about professional ethics and the state of the Bar. The strong performance of the Singapore economy in 2007 and the phenomenal increases in property prices have benefited the big and medium size firms more than the smaller firms. In the same year, we saw a trend in conveyancing firms allying themselves with real estate agents and illegal moneylenders in order to obtain conveyancing work from them. This has led to a spate of disciplinary actions against errant conveyancers. It is the responsibility of the Law Society to address these undesirable and unprofessional practices.

23 Last year, the Law Society tightened the Solicitors' Accounts Rules to provide a better check against misappropriation of clients' monies by lawyers. But the latest incident shows that these measures cannot prevent desperate or crooked lawyers from helping themselves to clients' monies. Criminal conduct of this nature harms not only the reputation of the legal profession but also those victims who cannot get full compensation from the law firm or the Law Society. We need to face reality and come up with a workable scheme to protect clients' monies. The obvious solution is to bar lawyers from receiving clients' monies. However, this will change radically a conveyancing system which has been in place for more than a hundred years. It may have a serious effect on the efficiency of the property market. We need to study the ramifications of such a change. For this reason, I have appointed Judge of Appeal V K Rajah to head a working committee comprising representatives from all the stakeholders in the property market to consider the desirability and the feasibility of introducing such and other schemes that are workable. The Working Committee has been given 3-5 months to study the problem and make its recommendations.

24 On the subject of disciplinary proceedings, the Government has accepted the recommendation of the Committee to Develop the Singapore Legal Sector to streamline and expedite the disciplinary process. This recommendation is timely as many of the cases that reached the Court of 3 Judges last year took an average time of almost 3 years from the date of

the filing of the complaints. The current four-member Disciplinary Committee will be replaced by a one-man Disciplinary Tribunal to be chaired by a former Judge, former Judicial Commissioner or Senior Counsel. The Bar should have no concerns about the fairness of this structure as lawyers will be judged by an eminent and experienced member of the profession. There should also be no concern about the removal of judicial review against the decision of a Disciplinary Tribunal as the Court of 3 Judges has full powers to review as well as to rehear its findings.

Continuing Legal Education

25 Mr Michael Hwang has referred to the establishment of a voluntary scheme of continuing legal education for the Bar. In this connection, the recommendation of the Committee to establish the Institute of Legal Education to provide mandatory continuing legal education is to be welcomed. I expect the Singapore Academy of Law, the Law Society and the two local law faculties to work closely together to assist in setting up the programmes and courses to make the scheme a success.

Timely access to legal developments

26 In this connection too, I wish to announce that the Singapore Academy of Law has set up a new website, www.singaporelawwatch.sg. It is called the Singapore Law Watch ("SLW"). It will track the latest legislative changes, the latest case law of the Singapore Supreme Court, current legal news in the media, as well as articles and commentaries on the impact of all these developments. SLW will be updated every weekday so as to bring the most current information to the legal community. A feature called the "RSS" feeds, known colloquially as "really simple syndication", is provided to allow users to obtain the information "to go", directly into their mobile devices and desktop computers. It gives practical effect to the dictum that those who run may read.

27 The SLW is a "one-stop" free service for the benefit of the legal community, and particularly for law firms that are resource challenged. I urge all lawyers to visit the website regularly and provide the SAL with feedback to improve or expand the service so that over time they may become addicted to visiting the website.

JUDICIAL CO-OPERATION

28 Let me now say something about the activities of the Judiciary in engaging our foreign colleagues. In the past, there were fewer opportunities for our judges to meet foreign judges. Today, our judges should have more contacts with other judges and get to know what is happening in the wider judicial world. Because of Singapore's good standing in international affairs, our Judiciary has also become well known in many parts of the world. The past year has seen much activity in terms of international exchanges. In 2007, in addition to meeting foreign judges and lawyers at the IBA Conference and other conferences in Singapore, our judges and judicial officers visited various countries and also attended a number of international conferences. The countries include Malaysia, Hong Kong, India, France, and the U.K. The Supreme Court also hosted some 30

high level international visits over the course of the year. The Subordinate Courts has also been actively sharing its experiences with its judicial counterparts. One of its events, the 2nd Regional Judicial Symposium in April 2007, saw the participation of 35 guests from 20 jurisdictions spanning Africa, the Asia Pacific region, the Middle East, the U.S.A. and Europe.

29 We will continue these exchanges this year. As of today, two of my colleagues have agreed to deliver papers at the invitation of the Australian state judiciaries at two separate conferences in Australia to be held this year. The benefits of sharing judicial experiences with judges from other jurisdictions should not be under-estimated. It allows us to learn from the lessons of other judicial administrations, and to establish our presence in the international judicial scene.

APPOINTMENT OF SENIOR COUNSEL

30 It is now my pleasure to announce the names of the new batch of Senior Counsel. On their shoulders will rest the responsibility of leading the profession from now on. In the past, we have focused on advocacy skills, legal knowledge and professional integrity as qualifying criteria for such appointments. For future appointments, we will also give consideration to the candidate's contributions to the law 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, and the future Institute of Legal Education.

31 The Selection Committee has decided to appoint six new Senior Counsel. They are:

Mr Jeffrey Dan Pinsler
Mr Sundaresh Menon
Mr Hri Kumar Nair
Mr Thio Shen Yi
Mr Cavinder Bull, and
Mr Lee Eng Beng.

CONCLUSION

32 The Judiciary and the legal profession (as the Attorney-General and the President of the Law Society have said in their speeches), face many challenges in the years ahead, especially in our efforts to make Singapore a legal services hub and a jurisdiction that is in the same league as the best judiciaries in the common law world. Let us work together to maintain a judicial system that inspires the complete confidence of citizens and residents alike.

33 In closing, let me on behalf of the Judiciary wish you all a happy and fruitful new legal year.