

**WELCOME REFERENCE FOR THE CHIEF JUSTICE
RESPONSE BY THE HONOURABLE THE CHIEF JUSTICE CHAN SEK KEONG**

SATURDAY, 22 APRIL 2006

Mr Attorney, Mr Jeyaretnam,

Let me begin by thanking both of you for your warm words of welcome and your assurances of support for the Judiciary in the days ahead.

2 I would also like to thank you, Mr Attorney, for your excellent and wide-ranging speech on the state of our legal system and its comprehensive coverage of my legal career. Since there is no tradition of a welcome reference for a new Attorney-General, I would like to use this occasion to say a few words on your appointment as Attorney-General. First, I congratulate you unreservedly. Second, your intellectual and judicial qualities are manifested in the many authoritative judgments which you have delivered, some of which have been accepted and followed in important Commonwealth jurisdictions. Third, your combined experience as a Legal Officer, as a Judge and as a Judge of Appeal will stand you in good stead to discharge your onerous constitutional duties with distinction.

3 My responsibilities call for a new mindset that can meet the challenges of sustaining an efficient and fair justice system that is sensitive to the needs of a multi-racial and multi-religious society and one that will also administer justice fairly and justly to all who seek justice in the courts. These are daunting responsibilities. Fortunately, there are a number of factors that give me the confidence to discharge them:

- **First**, the legacy left by Chief Justice Yong Pung How of a court system whose efficiency is legendary. The detailed briefings I have received from senior judicial officers of both the Supreme Court and the Subordinate Courts on the court systems, the support systems and processes, the current performance indicators, the current and future plans to upgrade them, show

their complete mastery and understanding of the objectives of the systems, and their concern especially that prescribed performance targets be met, leave me in no doubt that in their hands these systems and processes will not be allowed to operate otherwise than at their optimal levels of efficiency at all times.

- **Second**, the assurances of support of the Attorney-General's Chambers and of the Bar which you, Mr Attorney and you, Mr Jeyaretnam have given me. I am familiar with the high quality of legal output from the Attorney-General's Chambers, and I certainly look to the Bar for the professional skills and competence to match the high standards the Bench expects from counsel.
- **Third**, the support of a Bench that, with the appointments of Justice Lee Seiu Kin and Judicial Commissioner Sundaresh Menon, is undeniably stronger today than at any time in its history. They bring with them new ideas and different perspectives on the exercise of judicial power in the administration of justice.
- **Fourth**, I hope my work experience in private practice, as a Judge and as Attorney-General, totalling more than 42 years, in dealing with private and legal and policy issues both at the micro and macro levels will allow me to bring a new dimension and perspective to the administration of justice.
- **Fifth**, the motivation of any responsible public office holder to leave to his successor a legacy better than the one he has inherited.

4 There has been much speculation in the profession and the media on my vision for the Judiciary. All eyes are said to be on the Judiciary and the direction I will take. Indeed, my gardener has remarked that 4 million pairs of eyes are now on the Judiciary. However, my legal philosophy and approach to judicial decision-making are well known to the legal community as they are apparent from the judicial decisions I have given on the Bench. My determination to uphold the rule of law and respect for the integrity of the law and a fair judicial process are also well known to the legal community. It is therefore not surprising that Professor Michael Hor, who teaches criminal law and justice in the Law Faculty of the National University of Singapore, expects me "to re-focus on the law and its internal values –

rather than on its management and measurement by external criteria – with an increased attention to the quality of decisions, a fine tuning of the balance between fairness and efficiency.”

5 My response to this expectation is: “Yes, the fearsome backlog of cases which was the driving force behind the relentless waves of court reforms has been eliminated more than 10 years ago. Efficiency is vital in court administration but it should not be pursued to the point when it starts to yield diminishing returns in the dispensation of justice. The Judiciary must always give priority to upholding the fundamental values of the legal system, such as due process or procedural fairness, equal protection of the law, consistency and proportionality in sentencing, and rationality in decision-making. We should now be confident enough to give greater emphasis to the basics of judicial decision-making without the recurrent fear of a resurgent backlog.” But, these observations are not intended to deny the significant contributions of Chief Justice Yong to the development of Singapore law during his tenure. His many landmark judgments are found in the law reports and have been analysed and commented upon in law journals and the mass media.

6 Let me now mention briefly a few aspects of the legal system that I will pay particular attention to. They are (a) the administration of the courts; (b) the administration of justice, including criminal justice; (c) the Judiciary’s relationship with the Bar; and (d) the rule of law and Singapore commercial law.

(a) The Administration of the Courts

7 There will be continuity in the way the courts are presently administered. Efficiency will continue to be the norm. I need to emphasise this because there is some concern that if there is no constant oversight over court administration, things will backslide. I understand the concern but I believe that the work culture embedded in the system will not allow this to happen. As Chief Justice Yong has pointed out, a new generation of lawyers has been brought into the Legal Service and the Judiciary, with new mindsets and attitudes. Efficiency is now an established value in court administration. The practices and systems that have been driving

efficiency have altered the genetic structure of court administration, which can be further modified to achieve greater efficiency. In this connection, Justice Lee Seiu Kin and a team of IT-savvy lawyers are currently working on a project to reconfigure the Electronic Filing System into a more sophisticated Electronic Litigation System that will incorporate a new electronic case management module to provide real time alerts of delays in the progress of any case and trigger timely and appropriate remedial actions. These systems, together with our constantly updated rules of practice and procedure, will sustain our high standards in court administration. I intend to keep it that way.

8 But just as important is the changed mindset and attitude of the Bar towards efficiency and productivity. The current professional standing of many of our large law firms in the region testifies to this change. The Bar now recognises and accepts that the efficient and timely disposal of cases is in the public interest and in the interest of the litigants. I am confident that we shall collaborate closely to achieve both objectives.

9 Concern has also been expressed that the litigation bar is diminishing and losing young legal talent. This will be detrimental to the quality of the Bench and the administration of justice in the future. Mr Jeyaretnam has in his speech referred to the stress of litigation that has turned away young lawyers from the courts. This flight from litigation could become a serious problem. We will look into this. A survey conducted in December 2005 among the 236 law students in the National University of Singapore on their practice preferences showed that more than 50% chose practices in banking, corporate finance and securities (which are mainly advisory and documentation services), with only about 10% opting for general litigation.

10 I assure the Bar that young lawyers who appear before me and my fellow Judges should not feel stressed and should have no fear of being stressed. Mr Jeyaretnam believes that one way of enthusing young lawyers to love the law is to encourage the acceptance of *pro bono* work as a professional value. I support

these efforts and have agreed to Judicial Commissioner Sundaresh Menon acting as an adviser to the Law Society in devising programmes to promote *pro bono* work. I hope that more young lawyers will do advocacy work. The litigation bar should have its proper share of legal talent.

(b) The Administration of Justice

11 Both justice delayed and justice hurried can cause injustice. It is obvious that Judges must not judge in haste or prejudge disputes in order to dispose of cases faster. But, on the other hand, they must also not delay justice so as to impose an unacceptable cost on litigants or defendants in terms of liberty, mental stress and anxiety or loss or deprivation of property or other civil rights. Whilst court disputes should be disposed of in a timely manner, no litigant should be allowed to leave the courtroom with the conviction or feeling that he has not been given a fair or full hearing because it was done hurriedly. Hence, it is important that the Judiciary gets the balance right if litigants are to have confidence in the administration of justice. But efficiency and justice, or the appearance of justice, do sometimes clash.

12 A recent English decision¹ provides a good illustration of this clash of values in the legal system. A litigant had sought to disqualify a Judge from trying his case on the ground of apparent bias. The Judge refused, on the ground that the disqualification would cause considerable inconvenience to the system and the parties as the trial would have to be adjourned, there would be practical problems in finding a new trial judge at such short notice, the parties would suffer additional costs and there would be delay in fixing a new trial date. The Court of Appeal rejected these considerations and allowed the appeal. The relevant paragraph in the judgment reads:

“In terms of time, cost and listing it might well be more efficient and convenient to proceed with the trial, but efficiency and convenience are not the determinative legal values: the paramount concern of the legal system is to administer justice, which must be, and must be seen by the litigants and fair-minded members of the public to be, fair and impartial. Anything less is not worth having.”

¹ Sir Alexander Morrison v AWG Group Ltd [2006] EWCA Civ 6.

13 This clash of values goes to the heart of the matter. The fair administration of justice must ultimately trump court efficiency and convenience, where the two are in direct conflict. But in the general run of cases, these values are not antithetical. Justice can be dispensed efficiently. When efficiency is added, justice need not be subtracted. I intend to examine closely this aspect of the administration of justice in consultation with my fellow judges to find the proper balance between justice and efficiency.

Criminal Justice

14 I wish to say a few words on criminal justice. The strict enforcement of the criminal law has made Singapore a paradigm for law and order. There will be no letup by the courts in this aspect of criminal justice. There may be some expectation or even apprehension that the courts will now go soft on criminals, with potentially dire consequences to the crime rate. The punishment imposed in the first criminal appeal after my appointment, and which I was disqualified from hearing, is already the subject of media comment. That case does not signal a departure from established sentencing practice or benchmarks. Let me emphasise that the strict, but fair and efficient administration of criminal justice, will remain a key priority.

15 But concern has been expressed on our sentencing practices with respect to consistency and proportionality. Sentencing is a very difficult and contentious subject. Settled principles of sentencing and benchmarks can help to reduce inconsistency in punishments in the large majority of cases. But the unusual case always tests sentencing benchmarks and consistency in sentencing. It is also difficult to satisfy every constituency with an interest in crime and punishment. But correct sentencing is a critical aspect of the administration of criminal justice, and so we need to constantly review this. I intend to set up a panel to review how current sentencing and bail guidelines can be further rationalized and improved. It is essential to maintain public confidence that while the courts will continue with the policy of dealing firmly with criminals, the punishments imposed should fit the crimes.

(c) The Judiciary's Relationship with the Bar

16 The Bar is an essential part of our legal system. It has an indispensable role in the administration of justice. The Bar's role is not only to represent clients but to assist the Judges in dispensing justice. They must enjoy a good working relationship with the Bench. However, the relationship between the Bench and Bar has been uneasy in the last few years. But friction between Bench and Bar is not new in Singapore. Older members of the Bar may recall Chief Justice Wee Chong Jin's famous "trinity" speech when he chastised the then President of the Law Society for his professional lapse or arrogance in equiparating the public standing of the Bar with that of the Bench in the administration of justice.

17 It is necessary that we start a new chapter in our relationship. I look forward to a closer and more cordial and harmonious relationship between Bench and Bar. There should be less stress in litigation if counsel give no cause to the Judiciary to make litigation stressful. I should add that Senior Counsel have an important function as role models to the young members of the Bar in improving their advocacy skills, court presentations and ethical standards. This should be the primary objective of the Forum of Senior Counsel. Another is to act as a resource forum on ways to improve the legal system. This is a principle of *noblesse oblige*.

18 In this connection, I should mention that I have asked the chairmen of all the committees of the Singapore Academy of Law to redefine the objectives and functions of the SAL committees to ensure that they continue to help in improving professional standards and building a strong legal community. The Academy has a vital role in ensuring that the legal system reflects the fundamental values of our society.

(d) The Rule of Law and Singapore Commercial Law

19 The rule of law is a fundamental value in our legal system. From an economic perspective, it is also a valuable tool in attracting and retaining foreign investments. Singapore's phenomenal economic growth is due, among other things, to investor confidence that under the rule of law the Government may not act

arbitrarily and an independent and impartial Judiciary will protect and enforce contract and property rights according to law. The quality of our laws, especially our commercial laws, written and unwritten, and the existence of an independent and competent legal profession are other factors that have contributed to the inflow of foreign investments to Singapore.

20 It is, therefore, important that we develop and enhance our commercial laws to meet the legal needs of the business and financial sectors of the economy. Our commercial laws are, in terms of scope, maturity and modernity, comparable to the most favoured national laws in global finance, viz., New York law and English law. There is anecdotal evidence of an increasing demand for Singapore law services by business houses in the region. Singapore lawyers are well regarded in the region for their legal skills and expertise, and honesty and integrity in dealing with clients. Their professional reputation makes them potentially significant exporters of Singapore law services to the region.

21 The Judiciary will play its part in developing the principles of commercial law. On the extra-judicial side, Justice V K Rajah is heading a Committee of the Singapore Academy of Law to promote the greater use of Singapore law in the region and Judicial Commissioner Sundaresh Menon wants to promote it as the *lex mercatoria* of the region.

Conclusion

22 Chief Justice Yong's achievements in the administration of justice are unique and not capable of emulation. He has left behind a rock solid foundation on which the Judiciary, working closely with the Bar and the Legal Service as well as law academics, will have the opportunity to build a justice system that is consonant with the times and which is equal to the best in the world. Let us work together to realise these goals.

23 Let me conclude by thanking all of you for being here this morning. It is indeed gratifying to see so many lawyers present on a non-working day to express their support for the Judiciary.