



THE LAW SOCIETY  
OF SINGAPORE

## **OPENING OF THE LEGAL YEAR 2016 SPEECH BY THE PRESIDENT OF THE LAW SOCIETY**

### **INTRODUCTION**

1. May it please your Honours, Chief Justice, Judges of Appeal, Judges Judicial Commissioners.

### **WELCOME**

2. I extend a warm welcome to our overseas colleagues.
  - Mr Stuart Clark, President, Law Council of Australia
  - Mr Patrick O’Sullivan, QC Vice President Australian Bar Association
  - Mr Katsuyoshi Suzuki – Vice-President, Japan Federation of Bar Associations
3. 2015 was eventful for the Judiciary, the Attorney General’s Chambers and the Ministry of Law.
  - 4a. Justice George Wei was elevated to Judge of the Supreme Court.
  - 4b. 12 International Judges were appointed to the Singapore International Commercial Court.

4c. Senior Judges of the Supreme Court were appointed, and we welcomed back Justices Chan Sek Keong, Kan Ting Chiu, Andrew Ang, Tan Lee Meng and Lai Siu Chiu.

4d. Four Judicial Commissioners were appointed; Judicial Commissioner Chua Lee Ming, formerly General Counsel with GIC, Judicial Commissioners Foo Chee Hock and Foo Tuat Yien from the Courts, and Judicial Commissioner Kannan Ramesh, a leading member of the litigation bar. The Supreme Court also welcomed a new Registrar, Mr Vincent Hoong.

4e. Mr Tan Siong Thye, after a stint as a Judge on the High Court bench, was appointed Deputy Attorney General. Mr Kwek Mean Luck returned to the legal service as the second Solicitor General.

4f. After a general election which saw Mr K Shanmugam and Ms Indranee Rajah re-elected as Members of Parliament, they were re-appointed Minister and Senior Minister of State respectively in the Ministry of Law. We also saw Mr Poon Hong Yuen relinquish his role as deputy Secretary to Mr Han Kok Juan.

4g. On behalf of my Council, I extend my congratulations and best wishes to them all in their new appointments.

## **REFLECTIONS ON 2015**

5. 2015 was a year of milestones. It was the 800<sup>th</sup> anniversary of the Magna Carta, which in spite of its unpromising birth, symbolises the genesis of the Rule of Law. Singapore's birth in 1965 was likewise inauspicious, but last year we heralded our golden Jubilee, 50 years of success since independence. Our celebrations were infused with the poignancy of a deeply felt loss. Mr Lee Kuan Yew, our founding Prime Minister, passed away. It was the end of an era, a watershed moment, a tear stained entry into Singapore's post Lee Kuan Yew future.

6. Our collective zeitgeist last year therefore transcended celebration. It seems apt to pause and reflect. Today we remember Mr Lee's contributions not only to Singapore, but to the law, his first calling. As a politician with a lawyer's sensibilities, he built a foundation of institutional accountability, imposed zero tolerance to corruption, and demanded fidelity to the Rule of Law.

7. The Rule of Law is a remarkable idea, Lex Rex, instead of Rex Lex. Chief Justice, you observed in the case of *Dan Tan v Attorney-General*, that "The rule of law is the bedrock on which our society was founded and on which it has thrived. The term, the rule of law, is not one that admits of a fixed or precise definition". Upon this shared notion, that the law defines the boundaries of what is permissible, we order our businesses, our communities, our lives. We may debate the thickness or thinness of the Rule of Law. We may argue over specific human rights or the trade-offs between competing public policies. Both sides of these debates acknowledge that the Rule of Law is paramount. Lord Bingham observed that it was the nearest we would get to "a universal secular religion", and more recently, Lord Neuberger

suggested it was “more important and more fundamental than democracy”, a sentiment that perhaps only resonates with us lawyers.

8. The Rule of Law means different things to different people. As lawyers, we value the primacy, predictability and consistency of our laws. We prize the incorruptibility of our institutions. But we can't just be passive beneficiaries of the Rule of Law. We must function as one of its agents.

9. What then is required of us? Two immediate issues, though not exhaustive, are front of mind - access to justice, and access to counsel.

## **ACCESS TO JUSTICE**

10. Last year we celebrated the 30<sup>th</sup> Anniversary of the Law Society's Criminal Legal Aid Scheme or CLAS, and launched Enhanced CLAS, entrenching the delivery of criminal legal aid to the public. Not just an initiative of the Bar's, Enhanced CLAS is a scheme explicitly supported by government funding based on the caseload undertaken. It has the makings of a sustainable Public Private Partnership. This model institutionalises our existing spirit of volunteerism and brings us closer to Judge Learned Hand's injunction, “Thou shalt not ration justice”. Last year, CLAS lawyers helped 1,300 poor people accused of crimes, an increase of 300% from 2014. This is much more than a good start.

10a. Integral to Enhanced CLAS are the CLAS fellows. This is a team of young lawyers employed by the Law Society to do pro bono cases. This was made possible by Singapore 5 largest law firms who either underwrote the costs of employing a fellow, or seconded their associates to the Law Society

for the year. I am pleased to report that they have extended their support for a new group of CLAS fellows in 2016. While the biggest firms have more financial muscle, some smaller firms punched far above their weight by contributing funds to support a sixth CLAS Fellow. The impact of the CLAS fellows extends beyond the persons they help. When CLAS fellows get enthusiastic about criminal practice and pro bono work, they inspire a deeper interest in criminal law amongst a new generation of lawyers.

10b. Other medium to large firms stepped up in 2015. 22 firms signed MOUs with the Law Society where each firm pledged a targeted number of pro bono CLAS briefs every year. The aggregated pledges exceeded 300, and some firms exceeded their target. Unsurprisingly, lawyers from smaller firms and sole proprietorships remained the backbone of our volunteers. Two of our smaller law firms accepted over 50 and over 30 CLAS cases respectively. 19 individual lawyers took on 5 to 9 pro bono briefs, and 28 accepted over 10 pro bono briefs. These lawyers went the extra mile, and found it to be a busy thoroughfare.

10c. The Law Society also runs legal clinics with the 5 CDCs to give free basic civil and criminal law advice. These clinics have provided over 2,000 consultations and involved over 400 lawyers.

10d. At its heart, access to justice starts with knowledge of one's legal rights and obligations. We held 69 Law Awareness talks in 2015. More than 30 were held during our Law Awareness Week. This was a maiden effort where we worked closely with the CDCs. We provided the volunteer speakers; they provided the venues, the outreach, and identified the topics needed by

the community. Around 4,000 attended these talks. Law Awareness will be bigger and better in 2016.

11. The statistics suggest that we made an impact. But that's not the whole story. We estimate that one-third to one-half of our lawyers are involved in pro bono work in some capacity. That act of service is transformative. We as individuals and as a profession became more understanding, more compassionate and more empathetic. The mission to make pro bono part of our professional DNA is gaining momentum. I am proud to belong to a profession that can rightfully say that we are salt and light to our communities and our generation. I am proud to be a member of the Singapore Bar.

12. It may be an oxymoron, but pro bono isn't free. We need a back-end infrastructure to sieve and co-ordinate cases, build capacity, manage and train our volunteers. Last year, we held 31 criminal practice seminars, either subsidised or free for CLAS volunteers. Fund raising activities are inevitable. This year, the Law Society is planning a charity concert, headlined by Rani Singam supported by Jimmy Ye, Chok Kerong and friends. Many are former lawyers turned professional musicians. It's called Just Sing, coming to the Esplanade on the 6<sup>th</sup> of May, 2016. Save the date. And in 2017, on the 50<sup>th</sup> anniversary of the Law Society, we will reprise Just Walk.

## **ACCESS TO COUNSEL**

13. Access to Counsel. Article 9(3) of the Constitution gives an arrested person the right to be defended by Counsel. Accused persons must have the

means to defend themselves effectively. This right is itself a manifestation of the rule of law, and Jurists such as Judge Bazelon characterise it as a moral imperative. In Singapore, it is not a right of immediate access, but a right to consult Counsel within a reasonable time. But that's the rub. The practical application of "reasonable" is fraught with ambiguity, there is inherent elasticity in the idea. We appreciate that we must balance the rights of the accused with the ability of the police to do their jobs effectively. On the other hand, an accused may be detained for days, or even weeks, without access to a lawyer. We need to re-evaluate whether this is fair or desirable. From the Bar's perspective, the aspiration is access to counsel sooner, rather than later. It is a positive externality, its availability encourages public respect for our Criminal Justice System, and its absence, doubt in its fairness. In this, we are all stakeholders.

14. The Law Society believes in rational dialogue. Like the common law, change is often incremental. We have never demanded immediate access where a lawyer can charge in and tell the client to stop talking. That would actually backfire in an evidentiary system where adverse inferences may be drawn from one's silence, and could amount to bad advice. Dialogue has led to progress- accused persons can expect to receive a pamphlet of rights at police stations, and a pilot project starts this year where police interviews will be video-taped. Our Criminal Practice Committee has recommended that a suspect be allowed to consult a lawyer privately for up to 1 hour before statements are recorded by the police. Justice and fairness are served because it is that lawyer's job to advise the suspect to tell the truth, to articulate any defences they may have, to co-operate with the police; to advise if no defence is available, but also to advise on the privilege against self-incrimination. The need for Counsel is amplified given that an accused can be convicted on the

evidence of their confession alone, even if they subsequently recant. We do not believe that early access to counsel will preclude an effective and fair investigation. They are not trade-offs.

15. Investigating authorities must therefore audit their mind-sets periodically. To the extent that the reluctance to allow quicker access to Counsel is predicated on a worldview that lawyers are unethical or may hinder or obstruct an effective investigation; that assumption must change. It communicates a vote of no confidence in the criminal bar. That is an unfortunate message. Singapore needs good criminal lawyers just as it needs good prosecutors. We are encouraging law students and young lawyers to see criminal law practice as a fulfilling and honourable career, and even starting a third law school to increase supply. An ingrained suspicion of lawyers by the police is antithetical to this, and can discourage a young lawyer from exploring criminal practice. We accept that there are no simple answers, and that reasonable people can disagree. As an independent bar, our role is to keep the discussion informed and alive.

## **WORLD CLASS LAWYERS/STANDARDS**

16. Even as we congratulate ourselves on the quantity of our altruism and the quality of our practitioners, we need to take a good look at ourselves. We must always be a profession prepared to hold ourselves to the highest standards. Indeed, high standards must apply to all agents of the administration of justice, be they lawyers, prosecutors or judicial officers. This is self-evident.



17. Over 2014 and 2015, senior members of the judiciary raised the issue of declining standards of court etiquette and decorum by some lawyers to the Council. While my Council did not feel that this was pervasive, some instances cited to us were admittedly chronic, and even egregious. There was broad agreement that this behaviour had to be curtailed as it would otherwise have an adverse influence on our younger litigators.

18. Council worked with the Professional Affairs Committee of the SAL chaired by Justice Quentin Loh, and other senior members of the litigation bar. Our focus was on solutions, not punishment.

19. After discussion and debate, we arrived at a collective recommendation for the Chief Justice. The short version is this - where a Judge encounters behaviour by a lawyer in Court which falls short of the standards expected, instead of escalating it to an Inquiry Committee or Disciplinary Tribunal, which may occasionally be too blunt or disproportionate, and sometimes both, that Judge will have the option of requesting the Law Society to consider the matter. Council will contact that lawyer, explore solutions such as voluntary counselling with a senior lawyer, or attending stipulated CPD courses. The idea is to work with the lawyer, identify and then fix the problem. For accountability, Council will update the Court on the steps taken and the outcome. My Council agreed to this as we considered it a reasonable and proportionate.

20. Needless to say, while this is a less intrusive and more self-regulatory approach, it is not a free pass. Where a Judge complains of serious professional breaches, these will still go to an IC or DT. Also, where lawyers had a fair chance to fix things, but persist in unacceptable conduct before the

Courts, or refuse to voluntarily undergo counselling or training, the formal complaint process remains available.

21. Arising from this, the Law Society will seek more flexible powers when dealing with disciplinary cases. Right now, other than a striking out or suspension which the Court of 3 Judges can order in serious cases, Council's powers are limited to a fine, reprimand or warning. Often, it is either too harsh or too ineffective where the breach arises from oversight, overzealousness, or just a one-off mistake. We hope to amend the LPA so that Council can require a lawyer to undergo counselling, or attend specified training, as these are, in some cases, more nuanced and proportionate remedies.

## **ENGAGEMENT**

22. 2016 will continue to be hectic. We are intensifying our engagement with our members, our stakeholders, and the community. Let me highlight a few examples.

23. We are collaborating with the Ministry of Law over two years to help our small and medium sized firms. We will start with a detailed 6 month industry study to understand the business models in and level of technology adoption by these firms. We will produce a plan to help this sector overcome barriers, adopt value adding technology and best business practices. The bulk of the funding will come from the Ministry, for which I record my gratitude.

24. Connecting with fellow Bar associations continues to be important. This year, we will organise a legal mission to Myanmar for our law firms. Last

year, we held the first Malaysia-Singapore bar summit in KL; this year, we host. We hope to build an annual tradition where we can network, share ideas, and embark on joint projects.

25. We continue to expand our CPD menu for our members. I'd like to highlight two conferences. We will hold our Litigation Conference Workshop in April; QCs, SCs and senior litigators have been invited as trainers. In mid-July, we hold our 3<sup>rd</sup> Criminal Law Conference organised with the AGC, SAL and ACLS. The theme is Criminal Justice in the 21<sup>st</sup> Century and beyond. Many CPD points are on offer.

26. We have become more purposeful in engaging our younger members. Last year, we embraced social media – Linked-in, Twitter, and Facebook. We admit that we are amateurs in harnessing social media, but our fledgling efforts have been quite effective in disseminating some types of information. So, please “Like” us.

27. Our younger members will define the Bar's future milestones, and they comprise almost one-third our numbers. How do we make their professional lives more meaningful and sustainable? Our younger Council members helm a task force of young lawyers to study the issues, problems and concerns facing their generation. They are working hard and I look forward to their report later this year. Also to encourage participation by younger members in our committees, we will sponsor up to four young lawyers to attend conferences overseas, such as the IBA, IPBA and Lawasia conferences.

28. That is the Law Society's report card for now.

29. But let me close where I began. The Rule of Law in Singapore has been anchored because of Lee Kuan Yew's insistence on the integrity and incorruptibility of our institutions. It is a work in progress, and far from perfect. As we look into our future, we are entrusted with advancing this legacy. And I say "we", because the institutions and civil society represented here, in this room and on this occasion, will either strengthen, or weaken the Rule of Law in the years to come. Chief Justice, I have reason to be optimistic. For many years now, the stakeholders in the law have worked in a collaborative and constructive manner, we have agreed more than we have disagreed, and there is real progress to report. We must continue to advance the Rule of Law in Singapore's unique societal context.

30. It will not be without struggle, but I take some comfort in the words of Winston Churchill, who said; "Every day you may make progress. Every step may be fruitful. Yet there will stretch out before you an ever-lengthening, ever-ascending, ever-improving path. You know you will never get to the end of the journey. But this, so far from discouraging, only adds to the joy and glory of the climb."

## **CONCLUSION**

28. Your Honour knows that you and the Courts have the full support of the Bar, that we will work constructively with the Attorney General's Chambers in the administration of justice, and that we are committed to being a key pillar in upholding the Rule of Law in Singapore.

29. In closing, may I extend to Your Honour, the Chief Justice, all your colleagues on the Bench, the Minister for Law and the Attorney-General, the Bar's best wishes for your good health, clarity of vision, and strength of purpose. As we navigate the uncharted waters that are our next 50 years, I borrow from President Eisenhower in expressing my hope: "May we grow in strength without pride in self, May we, in our dealings with all peoples of the earth, ever speak truth and serve justice".

**THIO SHEN YI, SC**

**PRESIDENT LAW SOCIETY OF SINGAPORE**

**11 JANUARY 2016**