

SPEECH OF THE ATTORNEY-GENERAL VK RAJAH S.C.

AS DELIVERED AT THE OPENING OF THE LEGAL YEAR 2015, 5 JANUARY

Opening of the Legal Year 2015

May it please Your Honours, Chief Justice, Judges of Appeal, Judges and Judicial Commissioners of the Supreme Court:

1. This is my maiden Opening of Legal Year speech as AG and I would like to begin by saying that I intend to uphold the integrity of this Office, further the good work of all my predecessors and discharge the responsibilities of an Attorney-General to the utmost of my abilities. There are many challenges ahead for the Office in the light of the sweeping changes that have taken place in the total legal environment of Singapore since 1959, when we attained internal self-government with control and responsibility for our own legal system.

2. The Opening of the Legal Year 2015, which marks the 50th anniversary of Singapore's independence, is a very special occasion for all Singaporeans. As the A-G, it is therefore appropriate for me to devote my address to reflecting on the state of our legal system, its

development and progress in the last fifty years and the challenges ahead. Fifty years is a short span of time for the life of a nation, and also for the development of a legal system. But in fifty years, Singapore has managed to create a legal environment that is, and should be, the envy of the emerging economies of the world. And we can be deservedly proud: Singapore has been ranked 7th least corrupt nation in the world¹, 10th overall in the world in the World Justice Project's Rule of Law Index which measures how the rule of law is experienced by ordinary people² and 2nd in the World Economic Forum's Global Competitiveness Index³. While there might be some scepticism about ranking systems, they are nonetheless a good reflection of the impressions that large sections of the global community have of us. At this juncture, I wish to acknowledge the presence of former Chief Justice Chan Sek Keong and former Deputy Prime Minister Professor Jayakumar. Together with former Chief Justice Yong Pung How, they played critical roles in transforming Singapore's legal landscape over the last 25 years. We are all indebted to them.

¹ 2014 Corruption Perception Index, Transparency International, available at: <http://www.transparency.org/cpi2014/results>

² World Justice Project's Rule of Law Index 2014, available at: http://worldjusticeproject.org/sites/default/files/files/wjp_rule_of_law_index_2014_report.pdf at 172.

³ World Economic Forum's Global Competitiveness Index 2014 – 2015, available at: http://www3.weforum.org/docs/img/WEF_GCR2014-15_Global_Image.png

3. Singapore is best known for its strict and impartial enforcement of the law at home and abroad. For this, we have earned our fair share of admirers and detractors. Regardless of external opinion, we will continue this practice as the enforcement of the law without fear or favour is the cornerstone of the rule of law. In Singapore, no one is above the law. The recent high profile prosecutions brought against senior public officials for corruption is evidence of this. Our public officials must exercise their powers within the constraints of the law, and act in furtherance of the public good. If they do otherwise, they will be held accountable through the law.

4. Over the past fifty years, Singapore's challenge has been to negotiate how the rule of law can be best implemented within our unique framework of social, economic and security needs. Today, having achieved a measure of social and economic well-being, we find that our legal system is steadily moving towards a greater emphasis on the individual citizen's experience of justice, within the wider framework of the public interest.

5. There has been a great deal of discussion and division on what the rule of law really is. Too much intellectual ink has been spilt over its definition. While abstruse and high flown definitions of the rule of law

have their place in academia, we should be more concerned with having a practical and working model — a model that can be understood and appreciated by the general public. To me, the rule of law is characterised by four key features. First, that a country's key institutions are effective, incorruptible and impartial. Secondly, a culture in which rights are respected and effectively enforced. Thirdly, that justice is accessible — costs are not a barrier to resolving disputes for the poor and the vulnerable, the legal process is easily navigable, and there are no inordinate delays. Fourthly, the entire legal system is predicated upon fairness, a concept which implies moderation and proportionality in the content and enforcement of our laws.

6. It is my belief that today the general public appreciates the state of the rule of law in Singapore, and has confidence in my Office in upholding it. But more can and should be done. To this end, a series of significant changes have been implemented in my Chambers. These include setting up the AGC Academy to raise professional standards as well as improve situational awareness and the Strategic Planning Office to better prepare AGC for tomorrow, today. Additionally, decision making processes are being improved and timelines tightened. I turn now to highlighting key milestones in building the rule of law in Singapore.

Criminal Justice

7. An effective criminal justice system is a key pillar of the rule of law, as it constitutes the mechanism to redress serious grievances and bring action against individuals for offences against society. In the early years of independence, the deterrence of crime, especially gang-related crime, and continued freedom from corruption were priorities. Today, our children walk the streets at any time of the day or night without fear and we take for granted clean Government. Our enforcement agencies such as the Singapore Police Force, the Corrupt Practices Investigation Bureau, the Central Narcotics Bureau and the Singapore Prisons Service have, over the last five decades, played an enormous role in this transformation.

8. In the administration of criminal justice, we have not shied away from jettisoning unsuitable models from the West. The first bold step in that direction was the abolition of the jury system. This occurred in 1969 for reasons which, while controversial then, are no longer so. For Singapore, the determination of guilt was best left to professional judges. To us, criminal justice is better served under this model.

9. Over time our criminal justice system has gradually moved towards individualising justice. The overriding principle that has motivated these

changes is that of fairness — to victims and accused persons — and the public interest. The architecture of our criminal justice system has been meaningfully redrawn to ensure that due process takes centre stage. We should never allow the process to be the punishment.

10. The evolution of our criminal discovery regime is an example of the steps we have taken towards ensuring that the criminal justice process is more equitable to accused persons. Previously, there was no criminal disclosure regime (other than in capital cases) and thus no legal obligation for the Prosecution to disclose any evidence ahead of trial. Any disclosure was done out of goodwill or to bring about an expeditious resolution of the case. The Criminal Procedure Code 2010 introduced a structured disclosure regime through Criminal Case Disclosure Conferences. The Prosecution and the Defence now exchange their respective cases ahead of trial. This has better placed the Defence to advise their clients.

11. A fair criminal justice system is one in which sentences are commensurate with the culpability of the offender and seriousness of the offence and its impact on the victim and society. Offenders must also be given the opportunity to be rehabilitated and reintegrated into society. Up until the 1990s, our dominant sentencing philosophy was deterrence

coupled with retributivism, as our priority was crime control. This approach needed to be updated in the light of changing social trends including the increasing prevalence of minor mental illness and anti-social behaviour amongst youths. We have thus adapted our penal philosophy to accord greater weight to rehabilitation and now recognise that prison may not be best suited for all offenders, particularly if they have committed minor offences. Evidence of this approach is that our prison population has decreased by over 30% in the past twelve years. The fact that we do not feel any less safe in Singapore strongly suggests that we are on the right track.

12. Today, our judges have a whole suite of Community Orders to choose from, which can be tailored to each offender's rehabilitative needs. The Community Court also connects offenders with community resources and Judges are supported by trained psychologists and social work professionals to address underlying causes of criminality.

13. At the other end of the spectrum, Parliament has maintained the policy of mandatory capital punishment for the most serious offences,

but in recent years, has given the courts the discretion not to apply the death penalty in other cases where it was previously mandatory.⁴

Administration of Civil Proceedings

14. As our legal system matures, our civil processes have adapted so that cases can be heard expeditiously. A host of changes were introduced in the 1990s to eliminate the backlog of cases. It is now difficult to even imagine that it used to take 5 years before a case came to the High Court, and a further 3 to 4 years before the case reached the Court of Appeal. In my view, the contributing factor was not so much the change in the Rules of Court as the cultural change within the profession and the Courts that took root after court timelines were enforced strictly. I was a member of the Bar then and I can say from first-hand experience that the changes in the 1990s were initially painful for practitioners but we are now reaping dividends.

15. The courts have continued to modernise their processes, and in line with Singapore's vision to be a "smart nation",⁵ an eLitigation system has been introduced — our second, and improved iteration of e-Filing.

⁴ The death penalty is now mandatory only for murder committed "with the intention of causing death" (*i.e.*, murder committed under section 300(a) of the Penal Code (Cap 224)). In the realm of drug trafficking, greater sentencing discretion is provided to judges where the Accused only played the role of a courier; and cooperated with Central Narcotics Bureau in a substantive way, or has a mental disability which substantially impairs his appreciation of the gravity of his acts.

⁵ <http://www.ida.gov.sg/blog/insg/featured/singapore-lays-groundwork-to-be-worlds-first-smart-nation/>

While we seek to harness technology to efficiently administer justice, we must remember that technology, however essential, is just an accessory and it cannot assure that justice will be done in every case. In striving to be a smart nation, we must also be a nation of smart people.

16. Another cultural change in recent years is the increase in civil litigation between the public and the state in administrative and constitutional law issues, accompanied by a concomitant increase in civil litigation between individuals. This is in part due to the rise of an educated class with more awareness of their civil and constitutional rights. When seen in the right perspective, this is not a negative development as judicial review is the hallmark of the judicial enforcement of the rule of law, in relations between the state and its people. Judicial review is essential to the rule of law — the Government is subject to the rule of law as much as the least of us members of the public are. My Chambers is prepared to meet the increase in such litigation.

17. As Singapore continues to change, we must keep in mind that change must not come at the cost of what is essential. There are institutions, such as the judiciary, that should remain protected with special measures. Public confidence in the authority of the judiciary to

administer justice, and their ability to do so justly must be safeguarded. We have thus chosen to retain the offence of scandalising the judiciary. Our law in this regard diverges from the UK, which abolished this offence in 2013. There, it was determined that the judiciary, given its unimpeachable historical standing, was not in need of protection. It may be that the UK is on a different stage in their journey to Singapore, or that they are on a different journey altogether. In either case, Singapore must chart her own route. In jurisdictions which have scaled back on prosecutions under this offence, criticism of the judiciary has become part of popular entertainment, such that the days of respectful deference are “gone forever” and the judges are rendered accountable to the tabloids.⁶ Respect, once eroded, cannot be regained, even when the erosion is based on unfounded criticism. We must guard against this, particularly as our nation is still young and the constitutional conventions and divisions of responsibility are not understood by a significant proportion of the public.

Significant Structural Changes in our Legal System

18. None of the developments I have detailed above would have been possible without the growth of an autochthonous legal system in Singapore. In the early days, Singapore’s legal system was modeled

⁶ Judicial Accountability in Australia, Michael Kirby, 6 Legal Ethics 41 (2003) at 48.

after the British legal system. English judges in the Privy Council could credibly pass judgments on our cases as many of our laws were British imports. This remained the status quo even some time after independence. In the early 1990s, two significant changes took place. The first change was to ensure that our laws met the conditions of Singapore's circumstances. In 1993, section 5 of the Civil Law Act was repealed. More senior lawyers will remember that section 5 had provided for the automatic reception of English commercial law and statutes where there was no equivalent local statute. In its place, the Application of English Law Act was enacted to make it clear that no English enactment is part of Singapore law except as provided in any written law.

19. This paved the way for the second significant change in 1994 — the abolishment of appeals to the Privy Council and the establishment of a permanent Court of Appeal in Singapore, along with a new system of precedents. With this, our laws were now placed fully in the hands of the judges who best understood them and who were able to interpret them in the context of our society and culture. In his speech at the Opening of the Legal Year in 1994, the Attorney-General Chan Sek Keong noted the “crucial importance of a permanent Court of Appeal lies in its prospective role in the development of an indigenous legal system appropriate to the

needs and values of the society we live in”. Local developments had set Singapore on a different path to that of the UK, in terms of our political and social values, especially in public law and criminal law.⁷ Appeals to the Privy Council had been progressively curtailed since 1989 — appeals could only proceed in civil cases where both parties had a prior written agreement to do so, or in criminal cases where the death penalty or life imprisonment was involved and the Court of Appeal’s decision was not unanimous. The retention of the option of appeal in civil cases was designed to reassure foreign investors who might have lacked confidence in our courts. In the four years that elapsed between the curtailed rights and total abolishment, there were only two civil cases appealed to the Privy Council.⁸ This suggested that investors had confidence in the competence and fairness of our courts in commercial matters.

Singapore as a Legal Services Hub

20. Singapore’s status as a centre for arbitration and dispute resolution has been further cemented in recent years. In addition to the popularity of the Singapore International Arbitration Centre (“SIAC”), Singapore is presently the most preferred Asian venue for arbitration

⁷ Singapore had abolished trial by jury, and had instituted changes in burdens of proof in criminal cases.

⁸ These were related cases that were heard together. See Singapore Parliamentary Debates, Official Reports (23 February 1994), vol 62 at cols 388 – 389.

handled under the ICC rules, and the fifth most frequently selected seat in the world.⁹ These facts testify to the confidence the international commercial community has in our legal eco-system. The establishment of the Singapore International Commercial Court (“SICC”) and Singapore International Mediation Centre (“SIMC”) will further strengthen Singapore’s position as a legal services hub in Asia. May I take this opportunity to wish the SICC and the SIMC success in this role.

21. Singapore is also now moving towards becoming a regional intellectual property (“IP”) hub. The story of the establishment of our IP regime is one of intense growth in a short period, and demonstrates how Singapore has been able to adapt her laws to the global environment. In 1984, Singapore was rather unflatteringly described as “the piracy capital of the world”.¹⁰ By 2006, Singapore was consistently ranked highly for IP protection and is now ranked second in the world for having the best IP protection.¹¹

⁹ See 2013 ICC Statistical Report. The five most frequently selected seats are Paris, London, Geneva, Zurich and Singapore.

¹⁰ Cited in Peters, J. W., “Toward Negotiating a Remedy to Copyright Piracy in Singapore”, *Nw. J. Int’l L. & Bus.* (1985-1986), 563.

¹¹ World Economic Forum’s Global Competitiveness Report 2014/2015, available at: <http://www.ipos.gov.sg/MediaEvents/SingaporesIPRanking.aspx>

International Law

22. As a small state, Singapore depends on respect for international law for its territorial integrity, economic and social development and progress as a nation state. We have been a committed and responsible member of the United Nations since independence and have succeeded in playing a constructive role in international affairs, well beyond our geographical size. Singapore was a founding member of ASEAN in 1967 and played a key role in the creation of the Forum of Small States at the UN in 1992 and still leads it today. We have negotiated a host of treaties in furtherance of Singapore's interests. For example, free trade regimes, brought about by the signing of free trade agreements and investment agreements have allowed Singapore to increase our economic power beyond the size of our domestic market.

23. Singapore has relied on international dispute settlement mechanisms to resolve disputes with Malaysia on the Land Reclamation Case, the Pedra Branca Case and the Railway Land arbitration and with Indonesia in the Basel Convention Case. My Chambers was, of course, involved in all these cases. The cases demonstrate Singapore's commitment to the peaceful resolution of international disputes.

Legal Profession and community

24. In 1965, Singapore had 235 practising lawyers. Today, we have just under 5000 practising lawyers. While the number increased in the 1970s, in a speech to the Law Society in 1977, Mr Lee Kuan Yew lamented that while there were many lawyers, there were “not enough good ones”.¹² He observed bluntly that “the dimmest, dullest wit can make a living at the Bar and did so comfortably”. It took the growth of financial services in Singapore in the late 1970s to attract talent to the Bar.¹³ From 1976 on, the study of law, along with medicine, became one of the most sought after degrees in the NUS, and has remained so ever since.

25. The NUS Law Faculty has played a tremendous role in the development of our legal system over the generations. Many of its graduates have risen to excellence and now dominate the Bar, Bench and legal offices of the State. In the next fifty years, the SMU Law Faculty will surely make its mark in Singapore’s legal history. Hopefully, our third law school will provide another quality avenue for those who aspire to obtain a law degree. While on this note, I wish to add a personal observation. Those with the best examination grades do not

¹² Address by the Prime Minister, Mr Lee Kuan Yew, at the Annual Dinner on the Law Society of Singapore on 26 March 1977

¹³ *Ibid.*

invariably have the best lawyering attributes. We need to find better ways to recognise those who evolve differently or later. Practice is a marathon and those who sprint too early may not last the race. The third law school can play a meaningful role in this context.

26. The quality of our lawyers is well-recognised and our lawyers and law firms are no strangers to regional and international accolades. Our legal services sector was strengthened by the introduction of the Qualifying Foreign Law Practice (“QFLP”) scheme in 2008 through which licences are granted to global firms to practise in Singapore. This scheme was introduced in order that local firms and lawyers may benefit from the increased foreign presence and competition over time.

27. To ensure that our lawyers keep up with the latest legal developments, we introduced mandatory continuing legal education and continuing professional development. The legal community has accepted that these measures are essential to maintain our professional standards, which are already among the highest in Asia.

28. As professionals, we must also recognise that we have a duty to be ethical. While our lawyers are ethical on the whole, there is a small number who take advantage of less literate clients, such as the poor and

foreign workers. Let it be said that there is no room in the profession for lawyers who blithely breach standards of ethical conduct. Our lawyers should help those without a voice, and meet the needs of the vulnerable, instead of exploiting their need.

29. As our society advances, we must be mindful of those whose fortunes have not risen equally with the tide, and focus more on meeting the needs of our community. This year marks the first year in which reporting of pro bono hours is mandatory for lawyers renewing their practising certificates. It is hoped that this will encourage more members of the profession to contribute to society through pro bono services. The best laws will not count for much if people are unable to access them because they cannot afford to do so — this is where pro bono bridges the gap.¹⁴

Conclusion

30. Singapore has come a long way, and is almost unrecognisable from when we first started in 1965. In the first part of our journey, we looked to England. We have now embarked on a different journey. Today, we have an autochthonous system and look globally to the best policies the world has to offer, always adapting them to our local context.

¹⁴ <http://www.channelnewsasia.com/news/singapore/pro-bono-work-and-legal/1393826.html>

We recognise that the quest for fairness and excellence is ongoing and must never end.

31. The Bench, Bar and the Legal Service are committed to building a system that is just and fair, for an even better Singapore, although we must acknowledge that individual interpretations of “justice” and “fairness” may sometimes differ. However, in our quest for fairness and excellence we must bear in mind that liberal Western conceptions of the rule of law do not always suit Singapore’s social and cultural values.

32. I believe that a good pulse to ascertain the health of the legal system and the rule of law in particular, is the consensus of the legal profession. If our own lawyers do not believe the system is just and fair, there is little hope that the general public would think otherwise. Joseph Grimberg SC, who is one of the most respected lawyers from the pioneer generation, said in a speech in 2007 (and I quote):

“In all the 50 years that I have been a lawyer, the administration of justice has never been in more intellectually competent, more efficient, more fair-minded and safer hands, than it is now.”

The administration of justice today shares these qualities, and I am confident that they will continue to abide under your leadership, Chief Justice. We have much to look forward to in the next fifty years as our nation continues to chart its future. But legal professionals should never lose sight of the fact that the law exists to serve the community, and we are all servants of the law.

33. I close my address with the customary greetings. First, I welcome Justice Steven Chong's return to the Bench. AGC is indebted to Justice Chong for his contributions as A-G. Second, I take this opportunity to congratulate the five Judicial Commissioners who were appointed in 2014, JC See Kee Oon, JC Valerie Thean, JC Hoo Sheau Peng, JC Debbie Ong and JC Aedit Abdullah. Third, I extend my best wishes to Justice Andrew Ang on his retirement after a decade on the Bench and I am sure we will see him continuing to contribute in other ways. Finally, I would like to extend my congratulations to Mr Thio Shen Yi SC on his election as the President of the Law Society. On behalf of my colleagues in AGC and the Legal Service, I take this opportunity to pledge our full support to your endeavours to uphold the fair and efficient administration of justice in Singapore. I also extend our good wishes to your Honour the Chief Justice, Judges and members of the legal community, for good health and happiness in the year ahead.