

OPENING OF THE LEGAL YEAR 6 JANUARY 1996

THE opening of the new legal year is the occasion when you, Chief Justice, deliver your address on your stewardship of the judiciary in the year past and your goals for the judiciary in the year ahead. As such, your speech is keenly awaited by all of us every year.

The Attorney-General and the President of the Law Society, on their part, are expected to address the judiciary as befits the occasion and to express our appreciation for the manner in which your Honours have staunchly and efficiently discharged your judicial functions.

We have inherited an adversarial system of dispute resolution in our civil and criminal courts. In the recent past, our judges have by and large, following English practice, played the neutral role of referee in the judicial process. The parties, or rather their lawyers, controlled the pace and length of the proceedings. Today, this has changed, and for the better. Judges in many Commonwealth jurisdictions have become aware that there are competing demands on judicial resources. They now see the virtues of adopting an interventionist role to reduce waste of judicial time, consistent with the need for fair trials. In Singapore, you, Chief Justice, have successfully led the process of change in this direction, so much so that today our legal system which is based on transparent rules and open court trials and an independent legal profession is admired for its ability to provide quick and efficient justice without sacrificing the need for fair trials.

In the area of civil disputes, there is a better form of dispute resolution. Litigation is a contest of claims to legal rights and interests within a regulated and formal environment. It is a contest of wills under the law. Adversarial justice, however quick and efficient, invariably leaves in its wake losers and perhaps some degree of animosity. It is a zero-sum game which, absent a compromise before judgment, leaves no feasible way to save face. Litigation, by its nature, affects harmonious social relationships. We should therefore encourage our citizens to resolve their domestic, social and even financial disputes amicably. In the past when there were fewer local

lawyers, many trade disputes among local merchants were settled through mediation by their clan associations. Mediation is part of Asian tradition and culture.

Arbitration is a preferable alternative to litigation in cases where the parties want confidentiality and where the arbitral award has a greater reach in

enforcement than a court judgment. But otherwise, it has become, especially in commercial arbitrations, litigation in private.

Mediation has all the virtues absent in litigation and arbitration. The process, to succeed, requires some give and take by both parties, whatever

they believe their legal rights may be. But, as a mediated settlement is the result of the voluntary agreement of each party, it can only come about if each party believes that he has gained something from it. Both can come out of it with a sense of personal satisfaction.

Litigation should therefore be the last and not the first resort to resolving legal disputes. Since July 1994 the Subordinate Courts have instituted a form of dispute resolution akin to mediation with great success. Up to October 1995, out of 1279 cases, 1052 (82%) cases were settled through mediation, leaving 12% pending and only 6% which went for trial. The same efforts made in 1994 in the High Court have met with less success: 15% for civil suits, 49% for contested divorces and 38% for divorce ancillary matters. These figures are encouraging in themselves. Further analysis can demonstrate why the success rate for disputes in the Subordinate Courts is much higher than for disputes in the High Court. In any event, more can be done to use mediation as the first line of prevention of litigation, especially in family disputes.

In terms of institutionalising mediation as a form of ADR, we have fallen behind the United Kingdom. The Centre for Dispute Resolution (CEDR) was launched in 1990 and now has 300 members from mainly law and accountancy firms. Almost 900 cases have since been referred to CEDR, and settlements in mediation have occurred in almost 90% of cases where mediation was agreed. We should consider setting up a similar centre in Singapore. The Academy may be the ideal body to do it.

Lawyers need not despair of losing business. Professor John Haynes, an American psychologist, who is known as the father of family mediation in

SPEECH BY

*the Honourable
Attorney-
General*

USA, is reputed to have said that although not all lawyers are brilliant mediators, the best lawyer mediators are the best mediators. But they have to be trained to mediate, in the same way as lawyers are trained to arbitrate. The legal profession has a dual role to play in ADR: to encourage clients to resort to mediation as the first choice and to provide proficient lawyer mediators to meet their needs.

Whilst the work-load of the courts can be lightened by more mediation of civil disputes, their responsibility in protecting and preserving the rights and interests of all who work and live here may become more burdensome, especially in the administration of criminal justice. In my address last year I mentioned that our legal system and administration of justice would continue to be subject to over-exposure by the foreign media. This proved to be an understatement of the breadth and depth of unfounded smears on our legal system and the judiciary.

Notwithstanding that our detractors have called for a total black out by the international media of all news about Singapore, presumably to teach us a lesson for being "a tough little nation", Singapore is not about to disappear from the pages of the international media, on paper or on Internet. The main reason is that human right activists, academic libertarians and many opinion makers see Singapore's economic success as harmful to the western democratic model of economic development. They see Singapore as exemplifying a form of neo-Confucianist threat to freedom in Asia, despite their disdain for its "intellectual pretensions of relevance as a model for rapid economic development". Singapore must therefore not be allowed to succeed as a model for economic development if western democracy is to prevail in Asia.

What is the relevance of this debate to the judiciary? Because we rely on foreign investments, expertise and labour to develop our economy, the judiciary becomes the focus of media attention whenever non-Singaporeans are charged in court for offences under our laws. Its steadfast fidelity to the law is seen by our detractors as abetting the promotion of the Singapore model of development and the erosion of human rights. Hence, the judiciary is regarded as fair game for denunciation. Hence, we have the occurrence of an academic gratuitously traducing our judiciary in an international newspaper, by way of augmenting his argument against the proposition that Europe may have something to learn from Asia.

Unwarranted attacks on the judiciary will therefore not cease in future. They may be less direct, less crude or may take on the hue of grey.

Readers may then read into them the message they are looking for, according to their political perceptions of what Singapore is like.

How should the judiciary continue to deal with such attacks in future? Certainly not by denying justice to whom justice is due, whatever their standing or political suasion, but by giving them justice to whom justice is due. The constitutional functions and duties of the judges are spelt out clearly in their judicial oath. It requires each of them to "faithfully discharge [their] judiciary duties...and do right to all manner of people after the laws and usages of the Republic of Singapore, without fear or favour, affection or ill-will to the best of [their] ability...and preserve, protect and defend its Constitution".

We value the impartiality and independence of our judiciary not only because they are conducive to good and responsible government and promote the moral character of our people but also because these qualities are essential to our economic development and the well being of our people. I have no doubt that your Honours will not compromise your sworn duty to do right to all manner of people after the laws and usages of Singapore just because our detractors continue to allege otherwise.

A few weeks ago, Mr Joseph Grimberg spoke on behalf of the legal profession at the memorial service for David Marshall. David Marshall lives on as a towering figure in the legal profession, a legend at the criminal bar. As a politician and a citizen, he has never held back from criticising government policies with which he disagreed. But there is one institution which he has always spoken in high praise, and that is the judiciary, for the qualities I have already mentioned, notwithstanding that he was suspended from practice for 6 months for over-zealousness in protecting the interests of his client.

This is an appropriate occasion to remember the passing of David Marshall as a lawyer. I would have liked to repeat here, word for word, Mr Grimberg's eulogy on the life, careers and accomplishments of David Marshall. But custom does not permit. I would, however, commend those of you who missed that occasion to read Mr Grimberg's speech. David lived a full life. If for nothing else, we should remember him for his rage against death in these beautiful lines by Dylan Thomas:

*Do not go gently into that good night.
Old age should burn and rave at close of day.
Rage rage against the dying of the light.*

On behalf of my fellow officers in the Legal Service, I wish your Honours, especially you, Chief Justice, the very best of health and a tranquil and rewarding Legal Year.

"MEDIATION IS PART
OF ASIAN TRADITION
AND CULTURE."