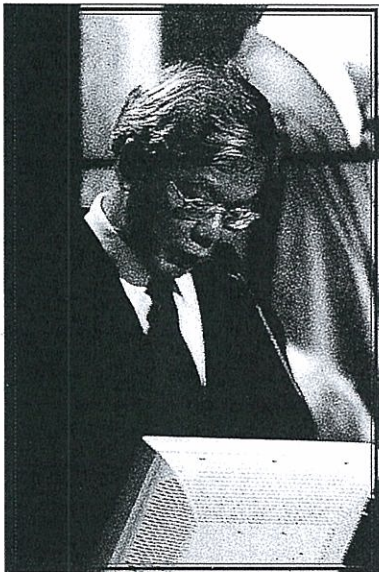


OPENING OF THE LEGAL YEAR, 5 JANUARY 2002

Speech by THE HONOURABLE THE ATTORNEY-GENERAL



THE HONOURABLE ATTORNEY-GENERAL
MR CHAN SEK KEONG

The efficiency of the Judiciary in clearing court cases continues to command wide admiration. The general public and the legal fraternity are proud of the achievements of the Judiciary. We value their fair and efficient administration of justice. This has enhanced the rule of law and the reputation of our legal system.

On Christmas day last, Straits Times published a report on the efficiency of the Judiciary with the headline: **"Judges waiting to hear High Court cases."** The sub-headline: *"15 courtrooms were empty [in 2000] for a total of 346 days because judges clear cases quickly but lawyers cannot keep up"*. The report itself revealed that in 1999, the number of "no-trial" days was 334, and that together, they cost \$2.4 million each year. The courts had to resort to "unless orders" *"to ensure that the flow of cases and their clearance are efficient"*.

The occurrence of "no-trial days" is not, in itself, a matter for concern. It is an inherent feature of our adversarial trial system. Trial dates have to be fixed in advance but the parties may settle their disputes just before or on the day of trial, making it impossible for other cases to be fixed for hearing on those days. The concern is with the high incidence of "no-trial" days. It is in the public interest that this be arrested. However, leaving aside the structural and operational conditions that affect the capacity of the litigation Bar to give their best, recent developments in the legal services sector may militate against their future improvement. Let me mention some of them.

The first is that the growth of the Bar has slowed down considerably in the last few years due principally to lawyers leaving practice before their time. Between 1997 and 2000, 1225 lawyers did not renew their practising certificates. In the year 2001, the number was 335. This was the first time in its history, that the Bar had negative growth. The Law Society, in a survey, found that 150 (45%) of the 335 lawyers were from civil litigation practice, with the majority with less than 10-15 years' experience. This indicates that the litigation Bar might have grown even slower than the non-litigation Bar. But the extent to which this loss was due to wear and tear, poor financial reward, pace and pressure of work or better careers outside law practice or other factors, or a combination of them, is controversial. But another surprising finding was that criminal law practice was not affected, suggesting that either criminal law practitioners are more resilient or less mobile.

The second is that the civil litigation Bar is likely to continue to shrink. The focus of law practice has been shifting away from civil litigation to non-litigation work. For the majority of our brightest law graduates, civil litigation is not their preferred career choice. These developments are the results of globalisation of legal services in the last decade. It has transformed the legal services sector. The presence of offshore law firms here has driven the large law firms to restructure their practices to focus on high value added legal work in international finance, capital markets, project financing and other emerging areas of practice. Together the offshore law firms and the large domestic law firms have made Singapore *"[the] home to South-East Asia's foremost legal market"*¹.

The globalisation of legal services in international finance and investments has increased the pace and complexity of law practice. This has led to many lawyers who cannot cope to leave practice. Globalisation has also increased the mobility of lawyers with the right legal skills and experience. Many Singapore lawyers are practising in offshore law

¹ See The Asia Pacific Legal 500, 2001/2002

firms in the major financial centres of the world. Within Singapore itself, domestic lawyers can move to offshore law firms located here, and litigation lawyers can move sideways to non-litigation work or arbitration. In the last few years, many senior advocates have been devoting more time to arbitration practice, especially to international arbitration. The new legal landscape has provided many more practice choices to lawyers.

The establishment of the joint law ventures and law alliances has given greater scope for our bright young lawyers to take advantage of the benefits of an integrated offshore law and onshore law practice, in remuneration and acquisition of legal skills and experience in high-end and cutting edge legal work. They have flocked to these firms. In the year 2001, 4 large firms together had signed up 67% of the pupils attending the Postgraduate Practical Law Course, leaving 23% to the rest of 755 law firms. Not many of them are being trained in civil litigation work. This is a portent of things to come. It also portends a shrinking litigation Bar.

The third limitation is the structure and practice of the litigation Bar. Its numerical strength is misleading. Because the legal profession is fused, only one firm of advocates may represent one party in the same action. This effectively reduces the size of the civil litigation Bar to the number of law firms, or less. Currently, there are 760 law firms, but 663 of them have between 1-12 lawyers. Most of the reputable and experienced advocates are partners in the big firms. Some big firms have up to 40-50 litigation lawyers. This would explain why the 20 largest firms also dominate the litigation business each year. The informal retainer system also affects the number of firms and advocates that may act against the big clients. A major client can immobilise all the advocates in the large firms with whom it has a strong professional relationship from acting against them. Most advocates divide their time as solicitors and many have to manage their firms as well. The operational number of advocates available for trials on any day is much smaller than is generally assumed.

We may have a potent mix of conditions that inhibit the growth and vibrancy of the litigation Bar. Many litigation lawyers have already succumbed to the pressure of having to keep pace with the courts. A shrinking litigation Bar does not bode well for us. A diminished litigation Bar leads eventually to a diminished Judiciary and a diminished legal system. We should not forget that the administration of justice in court is manifested by judges sitting in open court dispensing justice at public hearings where litigants are given their day of justice through counsel who speak for their legal rights. The administration of justice needs advocates as much as it needs judges. The new legal landscape will pose greater challenges to the civil litigation Bar in the future. They should address their shortcomings quickly and see what has to be done to enable them to discharge their professional obligations effectively in the administration of justice. The elite members of the Bar, viz., the assembly of Senior Counsel, have a special responsibility to ensure that the litigation Bar is not diminished in strength, performance and public standing in future, and that the Bar is not lopsided, and overladen with our best legal talents in non-litigation practice.

I have used up my allotted time. On behalf of my officers, I hasten to assure your Honours that State Counsel in my Chambers will be at the ready and set to take trial dates when given. I wish you Chief Justice, the Judges of the Supreme Court, the President of the Law Society and everyone present here, good luck, good health, and the blessings of a calmer and better year ahead of us.