

**FORUM ON PUBLIC PROSECUTION 2013:
PROSECUTING IN THE PUBLIC INTEREST**

6 March 2013

KEYNOTE ADDRESS BY THE ATTORNEY-GENERAL STEVEN CHONG S.C.

I. Introduction

1. Distinguished guests, colleagues and fellow prosecutors, it is my pleasure to extend, on behalf of my Chambers, a warm welcome to all of you to the Forum on Public Prosecution 2013. I would also like to take this opportunity to welcome our foreign representatives from Brunei, Myanmar and Vietnam. I am heartened to see such an encouraging level of attendance at this inaugural Forum on Public Prosecution, the first of what I hope will be many similar forums to come.

II. The importance of high standards of prosecution

2. Let me begin my address this morning with a few words on the importance of maintaining the highest professional and ethical standards in the conduct of prosecutions. This cannot be over-emphasised.

3. Currently, prosecutions are carried out by my Chambers, as well as some 27 Ministries, Departments and Statutory Boards that either have prosecution units or individual prosecutors. Many other Ministries, Departments and Statutory Boards also have purview over offence-creating statutes, and have been fortunate enough not to have prosecuted anyone for such offences. In the current environment, however, such "inactive" days are clearly numbered.

4. As Public Prosecutor having oversight of all criminal prosecutions, I recognise and would like to highlight the significant role that each and every prosecutor plays in the administration of criminal justice, regardless of how serious or minor the offences committed are. Prosecutorial work is not easy – prosecutors have to contend with

the stresses of courtroom litigation and its associated tight timelines; deal with counsel nimbly; manage victims and witnesses sensitively; and above all, ensure that the interests of fairness and justice are always being met, while fighting any number of “fires” at any given time. I commend you for your efforts and your contributions to the administration of criminal justice. I trust that you will endeavour to achieve ever higher standards, because it is imperative that each and every prosecutor discharge his duties competently, with care, pride and dignity, for the various reasons, which I now explain.

5. First, from the perspective of the accused person and the public, prosecutors make decisions – such as on the charges to prefer; whether or not to accede to representations; what sentence to submit for – which have the potential to deeply affect the accused person’s life, and in particular his individual rights and liberties. This in turn has tremendous consequences on the lives of the accused person’s family members and loved ones. Thus, we must ensure that great care and consideration is given to each decision that we make. If decisions are not rigorously internally scrutinised and do not undergo critical evaluation at different levels, this may result in unmeritorious prosecutions and consequently, undermine public confidence in the criminal justice system. At this juncture, I can do no better than to quote my predecessor, the then-Attorney General Chan Sek Keong, who stated that:¹

We have no interest in prosecuting the factually innocent. We do not prosecute unless we are satisfied that there is a reasonable prospect of a conviction. We do not prosecute weak or unmeritorious cases in the hope of getting a conviction. It is only too easy for us to prosecute all cases and cast the responsibility on the courts. Furthermore, it is an abuse of public trust and may undermine confidence in the system.

¹ Chan Sek Keong, “Rethinking the Criminal Justice System of Singapore for the 21st Century” in *The Singapore Conference: Leading the Law and Lawyers into the New Millenium @ 2020* (Buttersworth 2000) at p. 49-50.

6. Similar views and sentiments were expressed in a speech by Robert Jackson, a former United States Attorney General (1940-1941) and the Chief Prosecutor for the United States at the Nuremberg trials. He said:²

The qualities of a good prosecutor are as elusive and as impossible to define as those which mark a gentleman. And those who need to be told would not understand it anyway. A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.

7. Secondly, from the perspective of the criminal justice system as a whole, prosecutorial decisions made even at the initial stages of criminal proceedings have a far-reaching downstream effect. For example, the manner in which a plea of guilt is conducted – including what facts the prosecutor chooses to mention or omitted in his Statement of Facts, or the submissions that are made at sentencing stage – will form the factual bedrock on which any appeal must be conducted and therefore will determine the success or failure of the appeal.

8. Thirdly, from the perspective of the courts, prosecutors are officers of the court, who have, as Professor Jeffrey Pinsler has put it, “the distinct privilege and honour of being exclusively entitled (subject to law) to appear and present [a] case in court”.³ In a talk I gave to the Legal Service when I was on the Bench, I observed that the role of a prosecutor excludes any notion of winning or losing a case. His role is not simply one of crime control, but to seek and achieve justice. For this reason, prosecutors -- all of you – are ascribed the noble title of “Ministers of Justice” because they are strictly speaking not “advocates”. Consequently, we are duty-

² “The Federal Prosecutor” (1940) 24 *Journal of the American Judicature Society* 18, at pgs 18 and 20

³ *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor*, Jeffrey Pinsler, Academy Publishing, 2007, at pg 73

bound to assist the court in the administration of justice. This includes, for instance, the duty to present all relevant facts and law accurately, and not to withhold pertinent information. As a corollary to this, we should continually keep abreast of developments in both procedural and substantive law.

III. The increasingly challenging prosecutorial environment

9. My Chambers and I are keenly committed to ensuring that prosecutors are equipped with the knowledge and skills necessary to attain these high standards of competence and professionalism. The present Forum was organized to this end. Over the next two days, you will hear from several eminently qualified speakers on professional and ethical best practices, including practical guidance on the management of prosecutorial departments, conducting pleas of guilt and trials, as well as the all important, disclosure.

10. This Forum is particularly timely in light of the considerable changes and challenges in Singapore's legal landscape.

11. The new Criminal Procedure Code 2010 which came into force in January 2011 with its concomitant amendments in 2012, as well as the landmark decisions of the Court of Appeal in the *Kadar* cases,⁴ represents a watershed for our criminal justice system. The Criminal Procedure Code heralds a new era for Singapore's criminal justice system marked by greater transparency. It features major initiatives, for instance, the provisions relating to the Criminal Case Disclosure Conference which provides for the disclosure of materials to the defence prior to a trial.

12. Further, in the *Kadar* cases, the Court of Appeal had clarified that the Prosecution has an obligation under the common law to disclose certain unused materials that might be regarded as credible and relevant to the guilt or innocence of

⁴ *Muhammad Bin Kadar and Ismil bin Kadar v PP* [2011] 3 SLR 1205 and [2011] 4 SLR 791.

the accused, which might undermine the Prosecution's case or strengthen the Defence's case.⁵

13. These developments address in large measure the calls by the criminal bar to reform what was previously perceived as a “woefully inadequate state of prosecutorial pre-trial discovery” and their calls for “equality of arms”⁶ in terms of meaningful pre-trial disclosure of materials. While these developments undoubtedly provide for the greater protection of accused persons’ due process rights, they correspondingly increase the challenge of our work. Further, it has become abundantly clear that the Courts will not hesitate to take a stern view of perceived procedural lapses, including drawing adverse inferences against the Prosecution, and even acquitting the accused.

14. Apart from these legal developments, social developments have also significantly increased the complexity and challenge of prosecutorial work. Prosecutors are facing increasingly intense public scrutiny in this digital age. The

⁵ *Muhammad Bin Kadar and Ismil bin Kadar v PP* [2011] 3 SLR 1205 (*Kadar 1*) at [113]: “It suffices for us to say that we agree with the Prosecution that the duty of disclosure certainly does not cover all unused material or even all evidence inconsistent with the Prosecution's case. However, the Prosecution must disclose to the Defence material which takes the form of:

- (a) any unused material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused; and
- (b) any unused material that is likely to be inadmissible, but would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused.

This will not include material which is neutral or adverse to the accused - it only includes material that tends to undermine the Prosecution's case or strengthen the Defence's case. To ensure congruence with the statutory scheme for disclosure this material should initially be disclosed no later than seven days before the date fixed for the committal hearing for High Court trials or two weeks from the CCDC for Subordinate Court trials (corresponding to the timelines in ss 176(3)(b) and 161(2) of the CPC 2010 respectively). Where under s 159 of the CPC 2010 the statutory criminal case disclosure procedures do not apply, the common law disclosure described here should take place at the latest before the trial begins. The obligation of disclosure (as the Prosecution has correctly acknowledged in its further submissions) is a continuing one and only ends when the case has been completely disposed of, including any appeal. Throughout this period, the Prosecution is obliged to continuously evaluate undisclosed material in its possession to see if it ought to be the subject of further disclosure.”

⁶ Amarjeet Singh SC, “Equality of Arms — The Need for Prosecutorial Discovery”, in Law Gazette, September 2005(3).

public in Singapore has become more well-educated and outspoken. There is a greater willingness on the part of the public to question, criticise and even challenge prosecutorial decisions, including decisions to charge as well as decisions not to charge. They have access not only to the mainstream media, but also the New Media, in which an interactive and often anonymous community can instantaneously generate and spread information, regardless of its veracity and accuracy.

15. A prominent case in point would be the public backlash that followed the conviction and sentencing of the prominent plastic surgeon Dr Woffles Wu and the intense public debate surrounding the decision to charge him under section 81(2) read with section 81(3) of the Road Traffic Act for wilfully or recklessly furnishing false or misleading information, instead of under section 204A of the Penal Code for obstructing the course of justice, which carries a higher punishment. Much of the furore stemmed from a lack of understanding of criminal procedure and criminal law. My Chambers, under my instructions, issued a public statement to address such public misconceptions. In the interests of public confidence in the administration of justice, it is essential that such misconceptions must not remain unaddressed. However, as prosecutors, we must not be dictated by the vagaries of public opinion in exercising our prosecutorial discretion.

16. As prosecutors who have to stand firm upon the shifting sands of public opinion, and make fair and just decisions in an increasingly challenging environment, the going can often seem tough. I hope that this Forum will provide an opportunity, over the next two days, for all prosecutors to share our knowledge and views in an open and candid manner – to increase our understanding of the recent trends, and discuss whether and how we should adapt our practices to suit the changing environment. In particular, I hope that this sharing will enhance the consistency of prosecutorial practices.

IV. The need for consistency

17. Whether a Police Prosecuting Officer, or a Departmental prosecutor, or a DPP or APP conducts a matter before the court, the court should be able to be entitled to expect the same high levels of professionalism and assistance. For example:

- a. Authorities should be cited, in an accurate manner, to support substantive propositions – and the cases cited should be the most authoritative and recent ones.
- b. The correct versions of statutes should be cited, and where relevant, prosecutors should be able to address the court on the provenance and legislative history of statutory provisions.
- c. Prosecutors should help the courts to arrive at fair and just sentences either by submitting (based on the relevant precedents) on the appropriate sentences to be imposed, or at least highlighting relevant cases for the purposes of sentencing.

18. I am pleased to announce that in order to encourage more sharing of best practices and greater consistency in prosecutorial practices, my Chambers will be launching the following initiatives.

Structured attachment programme

19. First, we will be starting, on a trial basis, a structured attachment programme for prosecutors from the Ministries and the Statutory Boards to be attached to AGC, to gain insight into our working processes. To begin with, the attachment programme will be for 5 days for a relatively small group of prosecutors. During the attachment programme, prosecutors will have the opportunity to attend court hearings, including trials and Magistrates' Appeals, as well as lectures on focused aspects of criminal procedure. We intend to roll this out in the third quarter of 2013.

20. Conversely, there will be opportunities for short-term attachments for DPPs and APPs to be attached to the Ministries and the Statutory Boards. One aspect of criminal justice which I feel strongly about is the need to improve and refine the

working relationship between AGC, and the Ministries and Statutory Boards within the prosecution service. I am confident that these short-term attachments will serve to enhance interaction and cooperation between my Chambers and the respective agencies.

Revamped Prosecutor's Handbook

21. Secondly, we will make our revamped Prosecutor's Handbook available to all prosecutors in your Ministries and Statutory Boards. In fact, it is being printed as I speak and copies will be delivered to my Chambers next week. The revamped Prosecutor's Handbook is a vital example of my Chambers' commitment to contributing to the understanding and practical application of criminal procedure in Singapore. The book features a wide variety of practical topics, ranging from the assessment of the sufficiency of evidence, to the conduct of plea of guilt mentions, the impeachment process in trials and even appellate advocacy. The book also discusses the various new provisions found in the new editions of the CPC, and where appropriate, the editors have included relevant case law in support of their propositions. My Chambers will revise it regularly to ensure that it provides relevant, practical and updated guidance. I have full confidence that prosecutors will find this book an indispensable and essential resource for a better understanding of criminal procedure in Singapore. With better understanding, prosecutors will be able to provide a higher level of professional assistance to the court.

Workshops and seminars on recent developments in the law and their practical implications

22. Thirdly, where necessary or appropriate, my Chambers will offer more extensive training opportunities to Ministries and Statutory Boards to deal with developments in the law and their practical implications. In this regard, I must emphasise that AGC welcomes suggestions and feedback from Ministries and Statutory Boards on our current training programmes, as well as what training needs you may have. We will study such requests seriously and you have my assurance that we will endeavour to meet them where possible.

23. We will also continue to invite your participation in the *Basic Prosecutor's Course*, *Intensive Practicum (Mentions and PTCs) Course* and *Basic Trial Advocacy Course*. In this respect, I note that beginning last year, the *Basic Trial Advocacy Course* and *Intensive Practicum Course* were made open to Ministries and Statutory Boards. Thus far, however, only a handful have signed up for and attended the *Basic Trial Advocacy Course*. I strongly encourage you to sign up for these structured and useful training programmes, and look forward to even greater take-up rates in the future.

Joint Code of Practice

24. Fourthly, as announced in my speech at the Opening of the Legal Year 2013, we are putting finishing touches on the joint Code of Practice (which I in fact believe will be signed at the end of this month), which is the product of intensive discussions with the criminal bar. I would encourage each of you to familiarize yourself with this Code when it is released. We as a *corps* of prosecutors should adhere to the standards laid out in the Code in conducting our relationships with the Bar. Only then will the Code be able to achieve the envisaged aim of enhancing and promoting dignity in the conduct of criminal cases. I encourage all prosecutors to lead by example in your interaction with the Bar.

V. Working Relationship with AGC

25. Finally, I am heartened to note that the prosecutors in Ministries and Statutory Boards have always had a strong and healthy working relationship with Chambers. Indeed, many former DPPs and APPs have joined the Ministries and Statutory Boards as prosecutors.

26. Ministries and Statutory Boards are also able to send their requests for legal advice to my Chambers. Such requests are dealt with in the main by dedicated directorates within the Criminal Justice Division, namely, the Ministry Prosecutions Directorate and the Policy, Planning & Advisory Directorate. It is imperative for you to continually evaluate the legal implications of your decisions and actions, especially

in light of the legal developments that will be discussed in the course of this Forum, and where in doubt, to consult my Chambers so as to ensure that the final decision taken is consistent with past decisions or wider prosecutorial policies.

27. In reviewing such matters, however, AGC relies on the subject matter knowledge and specialist expertise of the individual Ministries and Statutory Boards. In this regard, we value your initial assessments, input and recommendations. We encourage you to set out your views in a detailed and candid matter, and to bring relevant information to our attention in a timely manner, such that the appropriate solution can be reached.

VI. Conclusion

28. Today's Forum represents an unprecedented opportunity for the various stakeholders within the prosecutorial system to come together and engage in a constructive discourse on key issues and trends. However, the effort to attain the highest standards of prosecutorial service does not end here. Let us continue to work together to enhance the competence and efficiency of our prosecutorial services, in order to advance the rule of law, the pole star of our legal processes.

29. It remains for me to thank the organizing committee and all of you present today at the inaugural Forum on Public Prosecution. I am confident that you will find the speakers engaging and what they have to say invigorating.

30. Thank you.

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