

RESPONSE BY CHIEF JUSTICE SUNDARESH MENON
OPENING OF THE LEGAL YEAR 2014

Friday, 3 January 2014

Mr Attorney,

Mr Lok Vi Ming SC,

Members of the Bar,

Ladies and Gentlemen:

I. Introduction

1. On behalf of the Judiciary, I am delighted to welcome each of you to this morning's ceremony. I am especially grateful to the Right Honourable Tun Arifin bin Zakaria, Chief Justice of Malaysia and to Justice Geraldine Andrews of the High Court of Justice of England and Wales, our guests from Australia, Hong Kong, Malaysia and Taiwan, representing their respective professional associations and our other guests from abroad for having made the effort to travel to Singapore to be with us this morning.

A. Farewells

2. Before looking ahead to the developments that we can expect in the coming year, let me first pay tribute to two stalwarts of the Supreme Court Bench, who retired in the past year having each blazed a trail in our legal history. Justice Lai Siu Chiu was the first woman to be appointed as a Judicial Commissioner in

1991 and as a Judge three years later. She served on the Bench for 22 years before her retirement in October last year. Known to be a firm judge, she was one of the hardest working members of the Court. Alongside her judicial work, Justice Lai was also an active supporter of a number of social causes including the Salvation Army and the Singapore After-Care Association. Among the last of the projects she led was the unforgettable charity concert held last year in conjunction with the 25th Anniversary celebrations of the Singapore Academy of Law (“the Academy”), which raised more than \$300,000 for the Yellow Ribbon Fund.

3. Justice Tan Lee Meng was the first academic to join the Supreme Court Bench. He was appointed as a Judicial Commissioner in February 1997 and then as a Judge six months later. Prior to his appointment, Justice Tan had been the Dean of the Faculty of Law and then the Deputy Vice-Chancellor of the National University of Singapore. Justice Tan was a popular member of the Faculty because of his kind and approachable manner and the clarity of his teaching. I was personally a beneficiary of those gifts having been taught by Professor Tan, as he then was and now, once again, is. These qualities also characterised his work as a Judge. His judgments were instructive, soundly reasoned and easy to grasp.
4. Both of them will be missed as Judges and as colleagues. I congratulate them on their successful decades in the law and repeat my wishes for each of them to have a long, happy and fulfilling retirement.

B. Welcomes

5. Even as I bade farewell to two distinguished colleagues, I was pleased to welcome Justice Coomaraswamy as a Judge of the Supreme Court, and five new Judicial Commissioners. Judicial Commissioner Lionel Yee joined the Bench last February and will soon complete his term. Judicial Commissioners George Wei, Tan Siong Thye and Edmund Leow joined the Bench at various times last year, while our newest member, Judicial Commissioner Lee Kim Shin was sworn in just yesterday. Their diverse backgrounds will be invaluable to the Supreme Court. Judicial Commissioners Yee and Tan brought their experiences from decades in the Legal Service. Judicial Commissioner Wei joined us after a noteworthy career as a highly respected academic with a particular focus on the law of intellectual property. And Judicial Commissioners Leow and Lee were each accomplished corporate lawyers. Judicial Commissioner Lee also brings the experience of having managed one of our largest firms. With these appointments, we enter the new legal year with a total of 14 Judges and five Judicial Commissioners. Collectively, the Bench can lay claim to a rich and diverse array of experiences that will strengthen it further.

II. The Continuing Quest to Improve

6. In my response at the last Opening of the Legal Year, I spoke of the responsibility vested in the legal profession, led by the Judiciary, to serve as “the custodian of the sacred trust to uphold the rule of law”; and ensure justice and equal opportunity for our citizens, these being foundational values

embodied in our Constitution.¹ The beneficiaries of that trust are the people of Singapore, and we must place them at the centre of all that we do to strengthen and enhance our legal system and the rule of law.

A. Justice for all

1. *The Subordinate Courts*

7. The judicial officers of the Subordinate Courts play a central role in delivering justice to the vast majority of Singaporeans. It is heartening therefore that these courts continue to maintain a high case disposition rate while also receiving very positive feedback in court user surveys. Notably, in October last year, they were conferred the World Class Award, which is the highest honour for global performance excellence conferred by the Asia Pacific Quality Organization. I am very grateful to the judicial officers and staff of the Subordinate Courts for their commitment and diligence in faithfully doing their utmost to deliver quality justice every day.
8. But the Singapore psyche has never countenanced resting on laurels. Last year, I identified four specific areas in which we could invest further efforts to enhance our service to Singaporeans.

¹ Response by Chief Justice Sundaresh Menon, at the Opening of the Legal Year 2013 and Welcome Reference for the Chief Justice (4 January 2013) at paragraph 12

(i) *Family Justice*

9. The first of these concerns the area of family justice. The Family Justice Committee, led by the Senior Minister of State for Law and Education Ms Indranee Rajah and Justice V K Rajah, has worked extremely hard to prepare an interim report setting out proposed reforms to the family justice system, which will soon be the subject of a public consultation. I will briefly mention some of the key recommendations which, if implemented, promise to transform family justice in Singapore.
10. The Committee recommends that the reforms should begin with community touch points such as the police, teachers, religious organisations and social welfare agencies which are often the first point of contact for those in need of assistance. Those at the touch points will be trained to recognise symptoms of familial distress that might benefit from intervention and support, and wherever appropriate, they will direct those in need of help to one of an integrated network of family service centres. At these centres, a collaborative and multi-disciplinary approach will be adopted, calling on the expertise of social workers, family care counsellors, child psychologists, and other professionals to find solutions where possible.
11. For cases that cannot be resolved without the intervention of the courts, a separate Family Court will be established with simplified and streamlined court processes as well as a markedly less adversarial approach, in which the judge will actively lead the process both in framing the issues and also in limiting the evidence to what is relevant. Unrepresented litigants may be assisted by a trained “court friend” who would be able to provide both practical and emotional

support. In matrimonial proceedings where a child is involved, the interests of the child will be safeguarded by the appointment of child representatives in appropriate cases, who may, among other things, act as the child's advocate and prepare for the court's consideration, independent reports on the arrangements and decisions that will serve the child's best interests. This will be complemented by the development of rules that are specifically designed to ensure that the child's interests are effectively brought to the fore in the determination of disputes.

12. These measures, if implemented, will make for a less acrimonious journey through the legal system. And this is to be welcomed because orders that a court may make in the context of a distressed family situation will work best where the parties are able and willing to continue to work together on such issues as maintenance or parenting.

(ii) *Civil Justice*

13. Second, I had invited the Chief District Judge to re-examine the administration of civil justice, with a particular emphasis on ensuring proportionality in the cost of litigating small civil claims involving sums of \$60,000 or less. The committee formed to look into this has recommended a number of significant changes to facilitate early settlement between parties, enable judges to play a more active role in case management and greatly simplify the applicable rules and procedures to enable the resolution of such cases at less expense and with greater efficiency. We will study these recommendations carefully with a view to their implementation in the coming months. In addition, a set of Guidelines for

the Assessment of Liability in Motor Accident Cases will be published and disseminated in the next few months to assist road users, insurers and motor workshops in making informed decisions regarding these cases, and so to facilitate their settlement.

(iii) *Criminal Justice*

14. In the area of criminal justice, the initial focus has been on regulatory and minor criminal offences. Steps are being taken to facilitate the expedited disposal of uncontested cases and to explore the prospects of offering composition for more of these minor regulatory offences.
15. We have also embarked on two important electronic projects that will enhance the administration of criminal justice. The first is the Integrated Criminal Case Filing and Management System (“ICMS”), a comprehensive multi-agency effort to enable criminal proceedings within the Subordinate Courts to be conducted in an electronic environment. The initial phase was successfully rolled out in July 2013, and we expect the system to be fully implemented by next January. The second is the Sentencing Information and Research Repository (“the Repository”), which will extract sentencing data from the ICMS and make it available in a usable form so as to promote research, transparency and consistency in sentencing. The LawNet version of the Repository is expected to be ready by the end of this year.

(iv) *Standing of the Subordinate Courts*

16. The final area which I mentioned last year relates to raising the standing of the Subordinate Courts. The Subordinate Courts (Amendment) Bill 2013 (“the Bill”) was introduced in the later part of last year and it proposes a number of changes including the renaming of the Subordinate Courts as the “State Courts” and the re-designation of the Chief District Judge as the “Presiding Judge” of the State Courts. The revised nomenclature will better reflect the primary position that these courts occupy within our judicial system. The Bill also proposes some other changes to enhance the strength and quality of the Subordinate Courts Bench. First, in view of the jurisdiction vested in these courts, the growing complexity of the cases filed there and the corresponding increase in the scale of the responsibilities discharged by the Chief District Judge, it is proposed that the position should be held by a High Court Judge or a Judicial Commissioner. Second, to ensure that the judicial officers in the Subordinate Courts are sufficiently senior and experienced, the Bill proposes raising the minimum statutory requirements for appointment as District Judges and Magistrates.
17. Aside from this, I should also mention that the Judiciary as a whole is reviewing and developing a more extensive framework for judicial learning. I have asked Justice Rajah to chair the Board of Judicial Learning that will develop the curriculum for the induction program as well as the continuing education of judges and judicial officers at both the Supreme Court and the Subordinate Courts. We have also developed more opportunities for District Judges to be mentored by their High Court counterparts.

18. These are all important changes and I must make special mention of the drive, energy and passion of Judicial Commissioner Tan Siong Thye who initiated a number of these ideas when he was the Chief District Judge. I have every confidence that his successor as the Chief District Judge, Mr See Kee Oon, will bring the same diligence, application and energy to this critical position.

2. *Community Legal Services*

19. While the courts must lead the administration of justice, we depend on the legal profession to work with us in this collective undertaking. The legal profession has been acutely aware of its responsibility for ensuring that all Singaporeans, including those with lower incomes, have access to legal services, particularly in areas such as criminal law, family law and basic civil claims and disputes. We have referred to these as “Community Legal Services” (“CLS”) and they pertain to the sort of legal issues that most Singaporeans can expect to encounter at some point.

20. Members of the profession have been actively involved in volunteering for assignments under the Criminal Legal Aid Scheme and the LASCO Scheme, and from the Legal Aid Bureau. These efforts all help to narrow the justice gap by facilitating access to justice for those who might otherwise be unable to obtain legal assistance.

21. There are many inspiring stories of lawyers who have gone out of their way to make a difference to those who find themselves at the margins of society. Last year, Mr Josephus Tan personally produced a video that recounted some of

these stories in a moving and memorable way. These lawyers, who work for little or no material reward or publicity and are driven solely by the desire to do the right thing, are the treasures of the profession. But as our society develops and its needs evolve, we must do more to extend this ethos across the profession.

22. In this connection, the Committee to Study CLS Initiatives, an inter-agency committee with representatives from the Judiciary, the Ministry of Law, the Academy and the practising profession, has recommended the reporting of hours expended by all lawyers on *pro bono* work. This is not intended to take anything at all away from the immense efforts of those who have faithfully been doing their bit over the years. But the data, which will be collected over a period of between three and five years, will enable us to better understand the *pro bono* landscape, our society's needs, and how far those needs are being met by the profession. The legislative amendments required to mandate such reporting will likely be introduced this year, with a view to their implementation, if passed, in 2015. In addition, the Ministry of Law has plans to increase the funds available for criminal legal assistance and it is anticipated that a committee led by a Judge of the Supreme Court will develop a framework that will guide us as we look to extend the reach of criminal legal aid. These moves are part of a wider effort to ensure that essential legal services are within the reach of our citizenry.

B. A hub for legal services – locally, regionally, internationally

23. As crucial as it is that we continue to develop our legal infrastructure to serve the man in the street, there is another important aspect to our continuing quest to improve. The law has assumed significance in facilitating trade and investment locally, regionally and internationally. With the growth of trade and investment in Asia, we have seen an increase in the incidence of transnational disputes and this has fuelled the demand for legal services across the region. We are strategically situated within one of the world's most exciting confluences of trade and investment and must build on this to empower and enable our legal profession to serve not just our society, but also the wider community in the region and beyond. In line with this, the Supreme Court played host last year to a number of critically important international conferences.

1. *Two significant developments in transnational practice*

24. Of particular relevance to transnational practice, two significant developments were recently announced. The first relates to the Singapore International Commercial Court. Ms Indranee Rajah and Justice Rajah also co-chaired another Committee that studied the viability of establishing the International Commercial Court and has proposed a framework for doing so. The Government has welcomed the Committee's recommendations, and this is now the subject of public consultation. The International Commercial Court aims to build on the success of the arbitration sector in Singapore and provide yet another world-class avenue for us to offer international dispute resolution services to the region by making our legal profession and our judicial

institutions available for the dependable, competent and timely resolution of such disputes.

25. Second, under the auspices of the Academy, the Commercial Law Advisory Panel has developed a framework setting out the foundational level of knowledge and skills necessary for successful commercial law practice. The framework will guide the Academy in its training and publishing activities, and promises to be especially valuable to practitioners in smaller and medium-sized firms. The Panel has also identified specialist areas of commercial law where we can aim to scale the peaks of excellence. I am very grateful to the Panel which worked extremely hard under the leadership of Mrs Lee Suet Fern to develop the framework within an extremely ambitious timeline.

2. *The Supreme Court*

26. Closer to home, over the course of the past year, we have studied, and have introduced or will soon introduce a number of important initiatives.

(i) Incorporating technology

27. At the last Opening of the Legal Year, the first phase of eLitigation for cases at the Supreme Court had just been launched. Over the past year, we have overseen the successful launch of eLitigation throughout the Judiciary, including in the Subordinate Courts. The successful launch of eLitigation marks the completion of a massive project involving the efforts of many stakeholders and a great many individuals. I am grateful to the Bar for the efforts made to

adapt to the necessary changes and for accommodating the teething problems which are to be expected in a project of this magnitude. But I must make special mention of the team which worked tirelessly to ensure the project's success. The officers involved had to manage the implementation of the new platform simultaneously with on-going court operations and they pulled this off with graciousness and patience.

28. Still in the pipeline is another exciting initiative to enable lawyers to call upon a full suite of electronic tools to manage their litigation needs. The Academy and the Infocomm Development Authority of Singapore, together with the support of the Judiciary, the Attorney-General's Chambers and the Law Society, have embarked on a project to develop Singapore as a centre of excellence for the cost-efficient management of complex litigation involving voluminous documents. The project promises productivity gains and corresponding cost reductions for law firms. The Call for Collaboration for this project has been awarded. The goal is to make available to all lawyers, for a modest monthly fee, a new cloud-based evidence management and electronic document review platform for conducting electronic discovery through LawNet. And to equip law firms with the necessary skills, we also expect to provide training and consultancy services.

(ii) *Case management initiatives*

29. In relation to case management in the Supreme Court, let me mention three initiatives. The first is the move to a modified docket system. Perhaps the most visible sign of this has been the Judge-led pre-trial conferences or "JPTCs". But

what has been less visible is the overhauling of our previous case management system as well as the accompanying staff reorganisation that was necessary in order to implement docketing. We now have some degree of judicial specialisation, and the revised system also ensures that pre-trial conferences will be more focused on the substantive issues that are likely to arise in each case, with Judges being involved from an early stage.

30. Second, we all recognise that litigation may not represent the most suitable method for resolving every dispute. Of course alternative dispute resolution remains voluntary; but parties henceforth *will* be actively encouraged to consider alternative dispute resolution wherever this is appropriate, and may even be required to attend a PTC with their counsel to discuss the cost implications of proceeding to trial. To enhance our capacity, we will establish a panel of retired Judges and benefit from their considerable expertise and knowledge of the law by having them conduct mediations or provide non-binding neutral evaluations.
31. Third, we will soon introduce changes to the management of Court of Appeal cases to promote the development of our jurisprudence. This is still under study, but we will explore the prospect of constituting 5-Judge panels for selected cases of jurisprudential significance so that where difficult or unsettled issues arise for consideration, these are resolved with the benefit of the collective wisdom and insights of a larger pool of judges. The changes will also see more customised management of selected appeals, with Case Management Conferences being convened to distil the relevant issues and to consider the appointment of *amicus curiae* where appropriate.

(iii) *Initiatives on the issue of costs*

32. Let me turn to the question of costs which has been a matter of concern, to address which we will introduce a number of significant initiatives in the coming year. I am grateful to Justice Chao Hick Tin, Chairman of the Costs Panel, and the team of Judges and practitioners on the Panel who studied the issue carefully and have proposed a number of procedures for better costs management in Supreme Court proceedings. As this is an issue that will have to be reviewed periodically, the Costs Panel will remain a standing committee that will monitor developments and make recommendations from time to time.
33. Following the Panel's recommendations, we will soon require that in matters before the High Court and the Court of Appeal, parties provide their respective estimates of party-and-party costs at the time that they file their final written submissions. Because these estimates will be given at a time when the parties are unaware of the eventual outcome of the case, it is hoped that we might no longer see the tendency for successful parties to inflate their cost claims even as losing parties object vehemently to sums that they themselves might not have hesitated to claim had the shoe been on the other foot.
34. We will also soon implement a pilot scheme for costs budgeting in selected High Court cases. For cases brought within the pilot scheme, parties will be required to file and exchange costs budgets of their estimated party-and-party costs at the JPTCs and these will be reviewed by the trial Judge. These estimates will form the basis for assessing the amount of costs recoverable from the losing party. Departures from costs budgets will only be permitted

where there is good reason for doing so, and we will review this after the pilot scheme has run its course.

35. We also expect, with greater frequency, to make costs awards based on the way major issues were decided in the case. This is already done from time to time and its greater use will bring us in line with practices in other comparable jurisdictions.
36. Finally, we will publish a set of costs guidelines to facilitate the resolution of cases, reduce the need for taxation and discourage unnecessary appeals on costs. These guidelines resulted from a survey conducted by the Costs Panel, and were formulated by reference to the fees generally charged by small- and medium-sized firms. The taxing court will, of course, remain free to deviate from the guidelines depending on the particular facts of each case.

(iv) *Criminal sentencing*

37. In the criminal justice context, the Sentencing Council, also chaired by Justice Chao, has looked into developing a methodology and framework to enhance consistency in sentencing. Amongst other initiatives, when hearing Magistrates' Appeals concerning offences where the promulgation of sentencing guidelines is likely to be helpful, a special panel of three Judges may be convened to hear the matter with a view to then issuing a Guideline Judgment. This will not only dispose of the case or cases at hand, but will also provide sentencing guidelines to guide the first instance courts, the Prosecution and the Bar. Where appropriate, *amicus curiae* may be appointed; and the Attorney-General

and the Law Society may be invited to make submissions on the appropriate guidelines. This promises to enhance consistency in sentencing, particularly in relation to offences where there are no useful sentencing guidelines or where there are conflicting authorities.

(v) *Reorganisation of the Supreme Court Registry*

38. With several initiatives afoot in the Supreme Court, the Registry will be reorganised to facilitate the best management of our resources. We intend to establish separate registries for the business of the Court of Appeal, the High Court and the International Commercial Court, each with its own practices and operations customised to the types of cases it will manage; but all ultimately reporting to the Chief Registrar.

(vi) *Results*

39. Finally, I am pleased to announce that the Supreme Court was successful in its application for business excellence re-certification, achieving the Singapore Quality Class (“SQC”), People Developer and Innovation Class. With regard to the SQC, we have once again been awarded the SQC Star, which is an acknowledgement of organisational excellence. We have also achieved a new Service Class award on our first attempt at certification. I extend my congratulations and appreciation to the Registrar, and to the Chief Executive (Judiciary Administration & Operations) and their teams of outstanding judicial and supporting officers for achieving these notable awards and milestones.

III. Appointment of Senior Counsel

40. I turn to the appointment of Senior Counsel. It has been 17 years since the first batch of Senior Counsel was appointed in 1997. It is a privilege to be appointed as Senior Counsel, this being the highest level that a practitioner may aspire to attain. Every Senior Counsel serves as a role model for the rest of the profession, particularly on matters of ethics, responsibility and professional ability. The Selection Committee reviews all the supporting information supplied by each candidate and also has special regard to whether the candidate has had a sufficient number of creditable appearances in the High Court and the Court of Appeal during the period under review. Key considerations include whether the quality of the arguments and the manner in which these have been put forward demonstrate over a period of time that the candidate is worthy of this high designation. The Committee also has regard to whether the candidate has a proven track record of public service through *pro bono* engagements or other work that is done for the good of the profession and the community. These are considered cumulatively to enable us to assess whether the candidate has the relevant attributes and is ready to be so appointed. This year, the Committee found that while a number of candidates were meritorious in several respects, none as yet sufficiently met these criteria to warrant appointment. I encourage the aspirants to keep these considerations in mind.

IV. Conclusion

41. As we come to the end of this morning's proceedings, let me gather some of the strands together. Our core mission is to serve our people, to whom the face

of justice is commonly encountered in intensely important and often personal matters that may or may not involve large sums of money. But at the same time, we must endeavour to continue building a world-class infrastructure that will enable us to serve the wider legal community in the region and beyond. We want on the one hand, to consolidate our position as a hub for legal services and as one of the regional leaders in dispute resolution; on the other hand, we must remain committed to ensuring effective access to justice for every citizen.

42. The simultaneous pursuit of these ends will present challenges that are not to be underestimated. I am grateful to each of you for the support you have pledged. With this support, I am optimistic that we will successfully manage the challenges that lie ahead of us.
43. Thank you for your presence this morning and I wish each of you and everyone present a happy, healthy and satisfying year ahead.