

RESPONSE BY CHIEF JUSTICE SUNDARESH MENON

OPENING OF THE LEGAL YEAR 2019

Monday, 7 January 2019

Mr Attorney,

Mr Vijayendran,

Members of the Bar,

Honoured Guests,

Ladies and Gentlemen:

I. Introduction

1. On behalf of the Judiciary, I am delighted to welcome you to the Opening of this Legal Year. We are especially honoured by the presence of a number of distinguished foreign guests this morning. They include the Honourable Chief Justice Prof Dr M Hatta Ali of the Supreme Court of the Republic of Indonesia, the Right Honourable Chief Justice Tan Sri Datuk Seri Panglima Richard Malanjum of Malaysia, the Honourable Chief Justice Lucas P Bersamin of the Supreme Court of the Philippines, other distinguished Judges from Indonesia and Malaysia, and leaders of the Bar from around the region. May I also take the opportunity to acknowledge the presence of Mrs Wee Chong Jin, the widow of the first Chief Justice of independent Singapore. I thank you all for taking the time and the trouble to be with us today.

II. Felicitations

2. Let me begin my response with a brief recap of the changes to the Bench over the past year.
3. In August, we bade farewell to Justice George Wei, who retired from the Bench, leaving a legacy of especially significant contributions in the area of intellectual property (“IP”), where he authored a number of important judgments, and led the IP Dispute Resolution Committee. The recommendations of that Committee have recently been the subject of public consultation and, if accepted and implemented, will further strengthen our IP dispute resolution framework.
4. Judicial Commissioners Foo Chee Hock and Foo Tuat Yien also left the Bench on completing their terms. Mr Foo Chee Hock has assumed full-time deanship of the Singapore Judicial College, and will focus on establishing it as a centre of excellence for judicial training. Ms Foo Tuat Yien contributed significantly to the administration of family justice during her term, and we wish her well in her future endeavours.
5. We also saw the appointment of four new Judicial Commissioners last year. Judicial Commissioners Tan Puay Boon and Mavis Chionh joined us following distinguished careers in the Legal Service, while Judicial Commissioners Ang Cheng Hock and Dedar Singh Gill bring a wealth of experience from years of successful litigation practice. Collectively, they will add to the strength and diversity of the Bench.
6. In addition to the new appointments, a number of reappointments have been announced. These will allow us to retain the expertise of some of the most

experienced members of the Bench. Justice Judith Prakash was reappointed a Judge of Appeal for a further term of three years; while Justice Chan Seng Onn has been reappointed for a term of two years, and he will be joined in the course of the year by Justices Choo Han Teck, Belinda Ang and Lee Seiu Kin.

7. This morning, I am also delighted to welcome The Right Honourable The Lord Jonathan Hugh Mance, who has been appointed as an International Judge. Lord Mance recently retired as the Deputy President of the Supreme Court of the United Kingdom and, as one of the most respected and admired commercial law jurists in the world, his appointment will add considerably to the strength and standing of the Bench of the Singapore International Commercial Court (“SICC”).

III. Consolidating our Changes

8. When I first addressed you as Chief Justice at the Opening of the Legal Year in 2013, I said that the profession, led by the Judiciary, is the custodian of the sacred trust to uphold the rule of law.
9. Over the past six years, we have sought to discharge that trust by embarking on a number of initiatives. These may broadly be categorised as follows:
 - (a) first, measures we have taken to strengthen our dispute resolution frameworks, in furtherance of our core mission to serve our people; and
 - (b) second, efforts we have made to develop a world-class legal infrastructure, so as to provide high-quality legal services and promote the rule of law at home and beyond.
10. Let me first provide a brief overview of the progress we have made in these areas, before turning to what I think are some of the critical challenges of the day.

A. The domestic front

1. *Family Justice Reforms*

11. I begin with family justice. The establishment of the new Family Justice Courts in 2014 marked a resolute commitment to a less-adversarial legal process in the family justice context. These approaches are multi-disciplinary and participative, and involve not only the parties and their counsel, but also mediators, counsellors, psychologists, social workers and other professionals engaged in a more collaborative search for optimal solutions to family disputes.
12. As I foreshadowed last year, we have embarked on the next phase of reform and significant progress has since been made. The inter-agency Committee to Review and Enhance Reforms in the Family Justice System, which is co-chaired by Justice Debbie Ong and the Permanent Secretaries of the Ministry of Law and the Ministry of Social and Family Development, has been exploring a number of deeper reforms to continue the work of strengthening our family justice framework. These include the further simplification of the family justice rules, enhancing the law to support judge-led case management, measures to increase compliance with child access orders, and the introduction of a specialist training framework for family law judges and practitioners. I expect the recommendations of the Committee will be finalised before long.

2. *Civil Justice Reforms*

13. Turning next to civil justice, progress has been steady and encouraging. In 2013, we simplified the procedural rules for smaller civil cases in the lower courts. In 2014, we introduced costs scheduling and costs guidelines to address costs-

related concerns for cases in the Supreme Court. In 2015, the Civil Justice Commission was established under Justice Tay Yong Kwang's leadership to reimagine and modernise our civil procedure framework.

14. The recommendations of the Commission, together with those of the Civil Justice Review Committee established by the Ministry of Law, were released for public consultation in October last year.
15. A substantial number of practitioners then came together to provide honest feedback and to share concerns over certain recommendations, chief of which were those relating to some aspects of the costs regime. In response to these concerns, that set of costs proposals has been withdrawn for now, and attention has shifted to the remaining recommendations. For the most part these have received broad support. The consultation process will continue to the end of the month, and I encourage those of you who have yet to respond, to do so. I am given to understand that the Ministry of Law will review all the feedback with a view towards possible implementation later this year. While teething issues can be expected, with your assurance, Mr Vijayendran, that the Law Society will work towards a smooth implementation of the final reforms, I have no doubt that we will make a success of them, and so improve our system of civil justice for the benefit of those we serve.

3. *Criminal Justice Reforms*

16. The third aspect of our domestic agenda relates to criminal justice. The Sentencing Council, previously led by Justice Chao Hick Tin and now by Justice Tay Yong Kwang, has studied and recommended a number of important initiatives. These include the empanelling of three-Judge benches for

Magistrates' Appeals involving significant or novel sentencing issues, and the more frequent issuance of guideline judgments in appropriate cases. These measures have enriched our sentencing jurisprudence and strengthened our criminal justice system.

17. The Criminal Justice Reform Act, which was enacted last year, introduced a slew of changes to further strengthen the criminal justice framework. These changes include video-recorded interviews which you, Mr Attorney, have spoken about, as well as the use of deferred prosecution agreements, and the expansion of community sentencing powers for the courts. One further change which I should highlight is the establishment of a Criminal Procedure Rules Committee, through which rules of criminal procedure can be enacted and refined. This is a welcome change and it will allow us to develop our criminal procedure rules more readily, as we respond to the needs of the day.

4. *Court of Appeal*

18. Finally, let me briefly mention the work of the Court of Appeal. Our caseload has increased steadily over the years, and is more than 50% higher today than it was in 2013. Additionally, we have seen cases of increasing complexity, as reflected in some of the judgments that have been handed down. To help us cope, Justices Belinda Ang and Quentin Loh have been sitting regularly in the Court of Appeal and, this year, they will be joined by Justice Woo Bih Li. We have also increased the number of Court of Appeal sitting days this year to accommodate the increase in the number of cases in the court's docket; and beyond this, we will also examine possible structural adjustments to help address the growing appellate caseload.

B. The international front

19. I turn to our efforts on the international front.

1. *SICC*

20. The SICC was established in 2015 and its docket has grown to some 29 cases, including one case commenced pursuant to an SICC jurisdiction clause that was agreed just two weeks after the SICC's launch. The judgments of the court have generally been well received and all of us have benefitted from the interactions between the Singapore and International Judges.

21. In tandem with the impending changes to our civil procedure rules, a committee of Judges and International Judges, assisted by the judicial officers and staff of the SICC Registry, worked tirelessly over the course of the last year to develop a body of procedural rules for the SICC. These have been specially designed to facilitate international commercial litigation, and they incorporate international best practices from a variety of dispute resolution mechanisms and legal traditions. The draft rules will, in due course, be refined in consultation with our stakeholders. In time to come, the rules may well prove to be among the many significant contributions of the SICC towards resolving international commercial disputes.

2. *International relations*

22. On the subject of our international relations more broadly, we have actively deepened our engagement in ASEAN. Last July, we hosted the 13th ASEAN Law Association General Assembly and the 2018 ASEAN Law Conference, as well as meetings of the ASEAN Chief Justices, Attorneys-General, Bar Presidents

and in-house counsel. As both of you, Mr Attorney and Mr Vijayendran, have recognised, these efforts have helped stimulate conversations on areas of mutual legal interest, and will form the foundation for enduring partnerships in the years to come as we look ahead to a more integrated ASEAN legal community.

23. We have also strengthened our warm relations with our Chinese counterparts, most notably through the establishment of the annual Singapore-China Legal and Judicial Roundtable. At the conclusion of the second Roundtable in Singapore last August, the President of the Supreme People's Court, Chief Justice Zhou Qiang, and I agreed to establish a working group to develop further areas of possible cooperation. In addition, we also signed a memorandum of guidance on the recognition and enforcement of money judgments in commercial cases to provide litigants with a guide to the laws and regulations that govern the enforcement of foreign judgments in both our countries. I look forward to deepening our collaboration with our Chinese counterparts at the third Roundtable, which will be held in China this year.
24. Further afield, we have fortified our relationships with other judiciaries through our involvement in the Judicial Insolvency Network, the Standing International Forum of Commercial Courts and the Asia Pacific Judicial Colloquium, where we participated actively in discussions on legal issues that affect the international legal community. We will host the next Judicial Colloquium in May 2019 and the next meeting of the Standing International Forum in 2020. Our involvement in these efforts allows us to build connections with our foreign counterparts and contribute to important international discussions in these areas.

25. It also bears mention that Justices Judith Prakash and Quentin Loh have been appointed as appellate Judges in the Dubai International Financial Centre Courts and the Supreme Court of Fiji respectively. Their appointments reflect the growing international standing of our Judges, and are a credit to us all.
26. Given the increasing breadth and depth of our international activities, an Office of International Relations will be established to drive and support our efforts in forging strong and strategic partnerships with other judiciaries. The Office will be overseen by Justice Steven Chong, who will serve as Judge in charge of International Relations.
27. Finally, I should also mention that we have actively advanced the cause of legal convergence through, amongst other things, the establishment of the Asian Business Law Institute (“ABLI”). The ABLI has since produced some commendable work, which will undoubtedly benefit the legal community in the region and beyond.

IV. Confronting our Challenges

28. If the story of the past half-decade has been defined by the strengthening of our justice system on both the domestic and international fronts, the next chapter will be shaped by how we, as a profession, respond to the dramatically changing legal landscape that I suggest is being reshaped by three significant forces: globalisation, technology, and the growing commercialisation of the law. These have come together so powerfully and so quickly that it seems certain that we are heading towards a future that will be dramatically different from the present.

29. Our collective attention *must* therefore shift to preparing ourselves for this new world. Against this backdrop, let me briefly outline three foundational aspects of legal practice that we can expect to be profoundly impacted.

A. Design of courts and dispute resolution mechanisms

30. The first is the design of courts and dispute resolution mechanisms.

31. Technology has already begun to transform our conventional notions of *where* and *how* disputes are resolved. Simple and low-value consumer disputes are, today, being resolved outside courtrooms through online dispute resolution systems adopted by e-commerce platforms. These platforms employ a mix of negotiation, mediation and adjudication to resolve disputes through user-friendly interfaces, and their throughput is simply staggering. Their popularity and ubiquity will grow with time because they are almost always cheaper, faster, and more convenient than traditional modes of dispute resolution. And while they lack the procedural formality and rigour of court proceedings, users willingly accept the trade-off given the relatively small sums involved.

32. Our understanding of *who* should resolve a dispute is also being transformed by technology. Advancements in data analytics, artificial intelligence (“AI”) and quantum computing have started to make machine-assisted court adjudication a reality. For instance, the American courts have utilised AI to assess the risk of recidivism in criminal cases, while the Chinese courts have piloted an AI-assisted system which is reportedly capable of conducting deviation analysis for Chinese judges by comparing draft judgments with past precedents.

33. Of course, the use of AI within a justice system gives rise to a unique set of ethical concerns, including those relating to credibility, transparency and accountability. For instance, recent studies have raised issues about bias in AI decision-making, and this has contributed to a spirited debate over the involvement of AI in the making of judicial decisions. Robust and rigorous discussions must be had about the proper use of such systems, and the way in which the undoubted potential of AI can be harnessed while its concomitant risks are managed.

B. Development of the law

34. The second area concerns the development of the law.

35. Over time, the *content* of the law will change as new areas of law and legal principles emerge in response to technological advancements. Established principles of law will also increasingly come under scrutiny in an age where “smart” contracts, virtual properties, driverless vehicles and automated artistic works become the new normal. We will have to navigate these uncharted territories without the comfort of direct legal precedent, and we must all keep abreast of developments in technology in order to grapple with the legal issues that will come before us.

36. There will also be dynamic changes to the *modality* of the law’s development. Automated dispute-resolution systems may, in time, diminish the flow of cases that forms the backbone of the development of the common law. This could have significant implications for legal methods, including analysis, writing and research, and, consequently, for legal education and training.

C. Practice of law and demand for legal services

37. The third and final area concerns the changing face of legal work.
38. As credible and cheaper options are made available by alternative service providers, clients may rely less on lawyers for general tasks such as document review or project management. This is already happening. Legal technology companies in other jurisdictions have begun to offer document preparation services at considerably lower costs, often bypassing lawyers altogether. Indeed, this is part of a broader trend of the disaggregation and commoditisation of legal services, and it has been aided by the democratisation of information and knowledge about the law. In time to come, it is conceivable that we may see the emergence of a class of “legal technicians” who, though not legally trained, may be able to provide services on a range of less complex legal tasks with the assistance of technology. This is already happening in parts of the United States and Canada.
39. In tandem with this, a culture of “self-sourcing” will likely take hold amongst members of the public. We shouldn’t be surprised if members of the public come increasingly to attempt to resolve at least some legal issues with the aid of technology, in much the same way that many individuals today seek out medical information themselves using the internet. This is similar in some respects to what some corporations have started doing, as they “in-source” legal services by relying on a combination of technology and in-house counsel to meet their legal needs instead of briefing external counsel.
40. These trends will impact the practice of law and the demand for legal services. While matters of high value and complexity will likely remain the preserve of

lawyers for the foreseeable future, the competition for such work will intensify. At the same time, technology will significantly reduce the hours required for certain types of legal work. The upshot is that law firms can expect to feel the pressure to operate on a leaner basis and they should start rethinking their traditional billing and cost structures as technology obviates certain forms of legal work, and in many other ways alters the face of legal practice.

41. Further, as alternative legal service providers become an established part of the legal landscape, we will have to negotiate a careful path between facilitating greater access to justice through the use of technology and such alternative legal service providers on the one hand; and maintaining the identity, ethos and values of our honourable profession on the other. The tension between these two imperatives is one that we will have to carefully manage.

V. Charting our Course

42. It is undeniable that the challenges we face today are complex; they may, when taken together, be considered a “wicked problem”. This expression was coined by design theorists in the 1970s to describe conundrums that arise from multiple causes, and which involve numerous and diverse moving parts. By their very nature, “wicked problems” cannot readily be solved by conventional straight-line thinking or single-actor one-shot solutions.
43. What then are we to do? I begin with three points. The first is that no single entity – neither the Judiciary, the Bar, the Academy nor the Government – has a monopoly on wisdom; nor can any one of them, acting alone, devise an all-encompassing response to these issues. What we need, therefore, is the resolve to face these challenges with a spirit of togetherness.

44. The second is that there will not only be one possible response to these issues, but many. The challenges are multifarious and we can expect that the responses must likewise be multi-pronged.
45. The third is that I intend to continue listening to what you have to say. In the lead up to my appointment in 2012, I spent several months meeting with and talking to many of you: some singly; others in small groups; some informally; others at more formal settings. My purpose was to listen, to reflect, and to learn from our collective thoughts and wisdom. Those conversations gave me much hope and also pride: hope that indeed we could do our part to make things better in our home; and pride that our profession remained deeply committed to the values of honour, excellence and service, and was teeming with ideas on how to improve itself. Many of the initiatives that we have launched in the last six years find their genesis in those important initial conversations.
46. In that same spirit, I plan to begin a new series of conversations on the impact of these forces on our profession, and on how we might together best chart our course for the future. While none of us will have all the answers to all the questions all the time, collectively we can – at the very least – break down the “wicked problem” into more manageable parts, and that will give us the best chance of making headway.
47. To kick-start these conversations, I suggest three possible areas of focus for reforming, reimagining and remodelling our profession.

A. Legal education

48. The first area relates to the reform of legal education. I spoke in detail about this at a lecture I delivered in the United States late last year, and will touch only briefly on some of the ideas here.
49. We entrust our law students to law schools to lay the foundation for their professional development and to help ensure a well-functioning legal profession. Law schools therefore carry a weighty burden to ensure that our younger generation of lawyers is well equipped to bear the brunt of the coming changes.
50. Today, successful lawyering requires far more than just the knowledge of the law. It demands competencies commonly associated with other disciplines, ranging from business and finance to project management and information technology. Consequently, law schools may need to do more than educate students in the law; they may also need to offer programmes that will equip students with the skills to find innovative solutions to the issues that they will be confronted with in contemporary legal practice.
51. But as the very bedrock of the industry shifts, the question of how best to educate the future generation emerges as a complex and dynamic one, and it cannot be answered by law schools alone. Recognising this, I have already commenced dialogues with some of the key stakeholders to think about reforms in our legal education landscape, and I expect these conversations to continue over the coming year.

B. Professional training

52. The second area relates to the professional training of lawyers. All of us must take seriously the need to continually upgrade our skills and knowledge of the law, because we can expect to face – with increasing regularity – novel legal questions for which there will be little precedential guidance. We must therefore continue to dedicate time and effort towards understanding emerging technologies, as well as acquiring the new skills and capabilities necessary for meeting our society’s evolving legal needs.
53. In time to come, work that has hitherto been done by junior lawyers, such as legal research, due diligence and document review, will increasingly be shared with or even taken over by technology and alternative legal service providers. The diminishing demand for legal representation in low-value or less-complex cases will also restrict the opportunities available for junior lawyers to hone their skills, thus affecting their professional development.
54. I am of course heartened that efforts have been made in recent years to address some of these issues. Both of you, Mr Attorney and Mr Vijayendran, have spoken about the efforts to train and improve the skills of legal officers and members of the Bar. And, last October, I witnessed the managing partners of 21 law firms pledge to increase advocacy opportunities for young lawyers. Thereafter, the Supreme Court Practice Directions were amended to stipulate certain roles for junior counsel at all civil trials unless otherwise ordered by the court. In the same vein, the Academy has introduced initiatives under the auspices of the Legal Industry Framework for Training and Education and the Future Law Innovation Programme to support the upgrading of the profession’s skills and capabilities.

55. However, such measures, laudable as they are, only scratch the surface of what can and must be done. The three forces I have outlined earlier will overturn many of our long-cherished notions about how lawyers should be trained and how law firms should operate. We cannot be content with piecemeal and modest efforts; instead, we must reimagine new and creative ways by which we may raise our professional standards and skills in the current milieu. The process of deep change will be difficult, even painful, for it will require us to step outside the confines of the familiar and the comfortable, and to make sacrifices for the future. But I believe that it will only be by doing so that we might ensure the continuing relevance of our profession to the needs of this age.

C. Transformation and innovation within the Judiciary

56. The third area relates to the transformation and innovation within the Judiciary. Just as the profession must adapt to change, the Judiciary, too, cannot stand still.

57. Over the course of the past two years, the Courts of the Future Taskforce has embarked on a number of initiatives to develop self-help solutions for litigants, devise technology solutions for the efficient administration of justice, and adopt the intelligent use of data.

58. One example of these efforts is the development of an online dispute resolution platform for motor accident claims. This will comprise an outcome predictor or simulator as well as a facility for mediation and settlement. The aim is to enable members of the public to resolve motor accident disputes online, very likely at much lower cost. The contract to develop this platform was awarded in November last year, and the project team has intensified its work with a view to launching the platform in phases, possibly beginning from the end of this year.

59. Apart from the development and implementation of such discrete initiatives, the Judiciary must also transform its processes and practices wherever appropriate. To this end, an Office of Transformation and Innovation, led by Justice Aedit Abdullah, has been established to coordinate and drive transformative change throughout the entire Judiciary. The Office will centralise and unify initiatives undertaken in each of the courts to achieve consistency and enable the scaling of benefits. It has been mandated to devise new and innovative approaches to the Judiciary's work, and will look into, among other things, improving processes, reducing paperwork and physical meetings, making better use of data, embracing innovative ideas and exploiting emerging technologies. In going about its work, the Office will seek input and feedback from relevant stakeholders, including the Bar. I am confident this will place us in a better position to meet the needs of the public.

VI. Appointment of Senior Counsel

60. I have reached that point in my response where I announce the appointment of Senior Counsel.

61. This year, the Selection Committee has decided as follows:

(a) Mr Foo Chee Hock and Ms Foo Tuat Yien, following their terms as Judicial Commissioners, are appointed Senior Counsel, *Honoris Causa*;

(b) Mr Gregory Vijayendran and Mr Siraj Omar are appointed Senior Counsel.

62. I congratulate each of the appointees and look forward to their continuing contributions to the profession.

VII. Conclusion

63. As today's proceedings near their end, the conversations we must have about our future must soon begin. The forces of globalisation, technology and the commercialisation of the law *will* reshape the face of the law, and we must adapt to them, without allowing them to unmoor us from the fundamental values of honour, public service, and integrity that have always formed the bedrock of legal practice and the profession.
64. I realise that the road ahead might seem daunting, and the challenges enormous, even existential in nature. But as I said when delivering the Academy's Annual Lecture last year, we have been here before, more than once. Each time, we saw our way through by coming together and summoning the will and courage to change. In the same way, I believe we will prove equal to the challenges that lie ahead, provided we pull together, reflect deeply on the issues that confront us, and support each other on this journey.
65. Thank you all very much for your presence this morning. On behalf of the Judiciary, I wish each and every one of you a happy, healthy and fulfilling New Year. Thank you.