

# RESPONSE BY CHIEF JUSTICE SUNDARESH MENON

## OPENING OF THE LEGAL YEAR 2023

**Monday, 9 January 2023**

Mr Attorney,

Mr Tan,

Honoured Guests,

Members of the Bar,

Ladies and Gentlemen:

### **I. INTRODUCTION**

1. On behalf of the Judiciary, I warmly welcome you to the Opening of this Legal Year. I am grateful to all of you, especially the Second Minister for Law and all our distinguished guests including those from abroad, who have taken the time to join us this morning. I would also like to acknowledge and thank the Honourable Vice Chief Justice Dr Sunarto and Justice Syamsul Maarif both of the Supreme Court of the Republic of Indonesia for being with us today.
2. I am delighted that we can, once again, open the Legal Year in person. It has been a long three years since we last met for this purpose, and it is evident from both your addresses, Mr Attorney and Mr Tan, that quite a lot has changed in that time. Some of the changes are desirable and we should strive

to integrate them as features of our new operating environment; some are likely to be transitory and to fade away as the disruptive force of the pandemic recedes; some are likely to be undesirable for the longer term, with deleterious effects that outweigh their temporary situational advantages; and for many others, we should take the time to consider them carefully. It is therefore apt, as we gather today, that we take the opportunity to reflect on some of what has taken place over the last few years, and to make a start on separating the wheat from the chaff as we renew our commitment to what it is that draws us together – not just today, but indeed, everyday – and that is our devotion to the administration of justice.

3. Before I turn to this, let me briefly recount the changes affecting the senior ranks of the profession since the Opening of the last Legal Year and also provide an overview of the Judiciary's progress.

## **II. FELICITATIONS**

4. Change is a constant. As you observed, Mr Tan, it is a necessary part of renewal. Over the past year the Judiciary saw more than its usual share of changes with new appointments and some notable departures. We welcomed to the Bench Justice Hri Kumar Nair, Judicial Commissioners Goh Yihan and Teh Hwee Hwee, and our International Judges, Justices Yuko Miyazaki, Christopher Scott Sontchi and Thomas Frederick Bathurst, and most recently, Justice Zhang Yongjian. Each of our new Judges brings a unique and

valuable set of skills and attributes and it is my pleasure to welcome them to the Bench.

5. Second, I congratulate a number of our Judges who were elevated:
  - (a) Justice Belinda Ang was appointed as a Justice of the Court of Appeal;
  - (b) Justices Kannan Ramesh and Debbie Ong were appointed as Judges of the Appellate Division of the High Court (“**Appellate Division**”); and
  - (c) Justice Kwek Mean Luck was appointed as a Judge of the High Court.

I have every confidence that in their new roles they will continue to make valuable contributions to the Bench and the profession.

6. Third, Justices Andrew Phang and Quentin Loh have retired. I will not understate the significance of this to our Judiciary, but I am very pleased that they now serve as Senior Judges of the Supreme Court. I extend my deepest appreciation to Justices Phang and Loh for their distinguished contributions to our Judiciary, most notably in their respective capacities as Vice-President of the Court of Appeal and as President of the Singapore International Commercial Court (“**SICC**”).
7. Fourth, Justice Woo Bih Li has been appointed as President of the Appellate Division while Justice Philip Jeyaretnam has been appointed as President of the SICC. They will each bring their own perspectives to further strengthen these parts of our Judiciary.

8. Finally, Justice Chao Hick Tin stepped down from his appointment as Senior Judge in June last year. We are immensely grateful for his decades of distinguished service to the Judiciary and the wider legal profession.
9. It is never easy to replace strong colleagues who have proven their worth to the institution. But as you observed, Mr Tan, it is a source of much satisfaction that the Judiciary continues to attract some of our best women and men. I believe that with the new appointments, the Judiciary will continue to grow in strength. I congratulate my colleagues on their appointments and thank them for answering the call to serve.
10. I also congratulate you, Mr Attorney, and the Deputy Attorney-General Mr Lionel Yee, on the renewal of your terms, and I wish you both the very best. Let me also extend my appreciation to Deputy Attorney-General Mr Ang Cheng Hock, who was a valued member of the Judiciary. Among many key contributions, he helped steer the implementation of the new Rules of Court, together with Justices Tay Yong Kwang and Chua Lee Ming. We extend our best wishes to him on his new appointment to one of the key positions in the legal establishment.

### **III. OUR PROGRESS**

11. Let me next briefly review developments over the past year.
12. In April 2022, we saw the coming into effect of the Rules of Court 2021 and the Singapore International Commercial Court Rules 2021. These were

accompanied by the issuance of the Supreme Court Practice Directions 2021, and the Courts (Civil and Criminal Justice) Reform Act 2021. These developments revolutionise our court processes and together mark a significant milestone in the history of our justice system. Although some of these, such as remote or asynchronous hearings, came about in response to the pandemic, we can expect they will remain in place for the foreseeable future, enabling us to administer justice more flexibly and efficiently. However, we also recognise that not all matters can be dealt with in this way. Each of our courts will develop presumptive positions as to the different modalities for the conduct of different types of hearings, and these will in due course be posted on the Judiciary's website.

13. In the middle of last year, I established the Judiciary's Commercial Practice Panel (the "**Panel**") to undertake a periodic review of our practices and identify areas for reform so that we may fortify our position as one of the leading commercial courts in the world. The Panel is led by Justices Ramesh and Jeyaretnam and its members include the lead Judges of the various commercial lists. The Panel will identify and consider adopting the best practices in commercial litigation that are suited to resolving the various types of commercial disputes. It will also identify emerging trends, developments and likely challenges so that we can take steps proactively to ensure that we are well prepared to meet them. The Panel is also establishing some Users' Committees, so that practitioners and other users can work with us to formulate initiatives and develop best-in-class practices in each area of

commercial practice. As we roll out these initiatives, I ask the Bar to work with us so that we can remain at the cutting edge of commercial dispute resolution.

14. The Family Justice Courts (“**FJC**”) continued its work on implementing our vision of Therapeutic Family Justice. This is a vitally important effort that potentially affects every Singapore-based family. Success in this effort, means helping distressed families experience a less traumatic journey through the justice system. Let me mention just a couple of new initiatives:

(a) In October 2021, the FJC started providing Family Neutral Evaluation (“**FNE**”) as an additional tool complementing mediation to consensually resolve contested issues involving maintenance and the division of matrimonial assets. Conducted on a non-binding basis by a judge, initial results have been very promising, with all cases resulting in consent orders that have been or are about to be finalised. The pilot will be reviewed and assessed in the first quarter of this year.

(b) We also collaborated with the Law Society and the Singapore Academy of Law (“**SAL**”) to develop the Family Therapeutic Justice Certification Programme, to equip lawyers with the inter-disciplinary knowledge and skillsets needed to practise effectively in a landscape that is oriented towards therapeutic justice. This is part of a longer-term effort to reskill our family justice professionals as they adjust to a new operating environment.

15. At the State Courts, we have launched several initiatives to enhance access to justice:

- (a) A Guidebook for Accused in Person, which was first published in English in 2017, is now available in all four official languages. This can be accessed on the Judiciary's website as well as through service channels at the State Courts and the Singapore Prisons Service, and will help self-represented accused persons better understand and navigate the criminal justice system.
- (b) The State Courts has also implemented the Early Engagement of Youth under 21 initiative to better address the needs of young offenders from the time of first mention until sentencing. In essence, the circumstances of these offenders will be assessed by court counsellors, who may refer them to community partners for educational or vocational courses and other pro-social activities. It is hoped that the scheme will help young offenders by better addressing the issues underlying their delinquency at an early stage.
- (c) We are also working with the Law Society to develop costs guidelines for civil proceedings in the District Courts. This will enhance transparency and predictability in costs awards while also resulting in more realistic levels of costs recovery for successful litigants. At the same time, we will continue to seek ways to ensure that court users are able to find justice at a proportionate cost.

16. I next touch on the work of the SAL. We established a subsidiary, LawNet Technology Services, to develop bold and innovative products and services that will better serve the needs of our members. The company will start operations this year. Like you, Mr Tan, citing the wisdom of ChatGPT, I do not think technology can replace human lawyers; but it will be a vital ally for all lawyers faced with the need to deal with ever increasing amounts of data and information. By establishing a subsidiary led by a suitably qualified board that also understands the needs of the profession, we hope to maximise our service delivery to our subscribers.
17. Separately, the SAL will also be launching a new online series of law reports covering decisions of the State Courts, Family Courts and Youth Courts to highlight selected judgments of these courts.
18. Turning next to the continuing development of the SICC, legislative changes to clarify the SICC's jurisdiction to deal with cross-border corporate insolvency, restructuring and dissolution matters came into effect on 1 October last year. I earlier mentioned the appointment of Justice Sontchi as an International Judge, after serving in various judicial capacities including as Chief Judge of the United States Bankruptcy Court for the District of Delaware. Justice Sontchi will work with Justice Ramesh, himself one of the leading insolvency judges in the world, to spearhead the vital contribution that the SICC can make to businesses in the region, in this critically important area of the law. The importance of this effort cannot be understated at a time of growing economic headwinds throughout the world.



19. We will simultaneously review the SICC's practice in dealing with challenges against arbitral awards and will further enhance our processes for dealing with infrastructure and other complex commercial disputes. And we will continue to make useful contributions to the development of a transnational system of commercial justice through our membership and participation in the Standing International Forum of Commercial Courts. In all these ways, the SICC is developing well as a leading international commercial court, and we are indebted to all our International Judges for their public service to Singapore.

#### **IV. REFLECTIONS**

20. Let me now return to the subject I alluded to at the beginning of my response – reflecting on the changes that have taken place over the past few years. I will focus on three broad areas: first, the impact of these changes on our profession, which you Mr Tan have spoken of at length this morning; second, the need for us to reimagine our legal landscape; and third, the critical issue of access to justice.

##### ***A. Impact on the profession***

21. We can all agree that we have been buffeted by considerable changes over the past few years. It seems even the basic modalities of how we work, and where, have undergone a fundamental shift. We need to acknowledge that these changes can have consequences, some of which should be avoided. Mr Tan, you earlier referenced surveys which suggested that legal practice was diminishing in its attractiveness as a profession. A part of this may be

down to a lack of community and mentorship, perhaps stemming from the sense of isolation that can come with remote working. A part of this is evidently also a function of changing salary dynamics. I will speak briefly to these points but before that, let me reiterate a fundamental point: amidst these changes, it is critical that we remain anchored to those things that must never change. I am speaking of the *values* that define our profession.

22. The practice of law is not just a way to earn a living. It is a calling to participate in the administration of justice. Mr Tan, you alluded to the fact that I had occasion to reflect on this when I heard the cases of some aspiring lawyers who had cheated in some papers for the Part B course. I think that reference bears some elaboration – this is what I said in one of the judgments<sup>1</sup>:

“Lawyers are called to be ministers in the temple of justice. Because of this defining feature of what it means to be a lawyer, requirements such as fulfilling the requisite course of study or passing the prescribed examinations are necessary, but ultimately *insufficient* conditions to warrant admission to the Bar. Beyond these technical requirements, there is the overarching question of character. Specifically, where one manifests a real deficit in the crucial attributes of honesty and integrity, one cannot

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<sup>1</sup> *Re Tay Quan Li Leon* [2022] SGHC 133 at [1].

be trusted to duly serve as an officer of the court aiding in the administration of justice.”

23. I think we need to emphasise the inescapable truth that being a lawyer entails a choice to live by those values of *honesty, integrity and service*, which transcend our individual careers, cases or examinations. This is important because each of us, by our involvement in this enterprise of administering justice, has the ability either to do tremendous good or inflict tremendous harm depending on whether we place character and values at the forefront of what guides us. That is why admission to the Bar is about character first, and only then about competence. And it should be the reason why we can aspire to find joy and meaning in our work. When it is done properly and for the right reasons, there are few callings more worthy or satisfying than that of administering justice and enabling access to it. If we as a profession can renew that commitment, then this surely will be the first and most important response to the concern that the law is losing its attractiveness as a vocation.
24. And we must do that by imparting the wonders of this profession to our juniors. The practice of law has traditionally been learnt by apprenticeship and its values have been transmitted through sustained mentorship. This entails watching and listening to one’s mentors and role models. Having spent much of the past three or so years working remotely, there will inevitably have been some loss of such opportunities. But the solution to this is unlikely to be in forgoing the benefits of working remotely altogether. Indeed, as you also noted, Mr Tan, our younger colleagues may want a measure of flexibility in

their working arrangements. We must find innovative solutions so that we can strike an optimal balance.

25. It is noteworthy that research on virtual developmental relationships<sup>2</sup> suggests that remote mentorship can offer some advantages. For instance, visual status cues are minimised in video-based conversations by reducing all parties to a voice and screen of equal size. There is also the flexibility to accommodate different schedules, and the ability to leverage on remote working tools. Hence, even with hybrid arrangements, we should not think that mentoring can be put aside just because we are working from home. On the contrary, there must be a conscientious *intentional* effort to mentor our juniors and to invest in their developmental growth. This should be done thoughtfully with a consciousness of the fact that this will be essential, if we are going to succeed in fostering and retaining young talent, infused with the right values. The simple point is that values are sometimes more easily caught than they are taught.
26. A diminution of close mentorship opportunities could have other serious and lasting ramifications, including a degradation in ethics and professional standards. There has been a noticeable rise in breaches of ethics and professional standards over the last few years. The number of disciplinary tribunals appointed from 2018 to 2021 has been rising: 12 were appointed in 2018, 13 in 2019, 16 in 2020, 28 in 2021 and 25 last year. From these cases,

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<sup>2</sup> “How to Mentor in a Remote Workplace” (22 March 2022), Harvard Business Review.

we can discern at least three trends:

- (a) First, a drop in client care standards: In some cases, counsel have acted contrary to their clients' instructions,<sup>3</sup> failed to keep their clients reasonably informed of the proceedings,<sup>4</sup> or been disloyal to their clients' interests.<sup>5</sup>
- (b) Second, poor professional standards: This has ranged from counsel failing to comply with the regulations for running a practice,<sup>6</sup> to falsely attesting to the execution of documents,<sup>7</sup> to deliberately breaching a solicitor's undertaking.<sup>8</sup>
- (c) And third, disregard for the court process, most notably in the criminal justice sphere where counsel have sought repeatedly to reopen capital cases on spurious grounds at the eleventh hour.<sup>9</sup>

27. I do not attribute these trends to the shift to working remotely. My point is that a looming decline in ethical and professional standards is likely to be exacerbated if we do not actively apply ourselves to fostering the values that

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<sup>3</sup> E.g., *Law Society of Singapore v G B Vasudeven* [2019] 5 SLR 876, *Loh Der Ming Andrew v Koh Tien Hua* [2022] 3 SLR 1417.

<sup>4</sup> E.g., *Law Society of Singapore v Constance Margreat Paglar* [2021] 4 SLR 382, *Law Society of Singapore v Ooi Oon Tat* [2022] SGHC 185.

<sup>5</sup> E.g., *Law Society of Singapore v Ezekiel Peter Latimer* [2019] 4 SLR 1427, *Law Society of Singapore v Tan Chun Chuen Malcolm* [2020] 5 SLR 946, *Law Society of Singapore v Mahtani Bhagwandas* [2021] 5 SLR 1250.

<sup>6</sup> E.g., *Law Society of Singapore v Yeo Siew Chye Troy* [2019] 5 SLR 358, *Law Society of Singapore v Dhanwant Singh* [2020] 4 SLR 736.

<sup>7</sup> E.g., *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068, *Law Society of Singapore v Thirumurthy Ayernaar Pambayan* [2022] SGHC 79, *Law Society of Singapore v Mohammed Lutfi bin Hussin* [2022] SGHC 182.

<sup>8</sup> E.g., *Law Society of Singapore v Naidu Priyalatha* [2022] SGHC 224.

<sup>9</sup> E.g., *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 2 SLR 377, *Gaiyathiri d/o Murugayan v Public Prosecutor* [2022] SGCA 53.

must characterise our profession, and a drop in standards *cannot*, and *will not* be tolerated. We must therefore act together to guard against this.

28. More than 16 years ago, as a Judicial Commissioner, I sat on a committee of the Law Society that was chaired by Mr Jimmy Yim SC, to explore ways to enhance and institutionalise the *pro bono* spirit in our profession. That was an early instance of a close and directly collaborative effort between the Law Society and the Bench. I have decided to reprise that approach with some refinements. I have asked Justice Valerie Thean and Mr Yim together to spearhead a team that will develop a strategy aimed at re-establishing the moral centre and values of our profession for existing practitioners and, just as importantly, at fostering this among new entrants to our ranks. More broadly, I would also like the group to consider the impact of the changes arising from events of the last three years, from the perspective of our professional and ethical well-being. I think this will be an important initiative for our future and I look forward to their findings and views in due course.
29. Before leaving this, let me touch briefly on the issue of salary, which too was cited as a push factor by some who chose to leave the profession. I preface this with the observation that lawyers traditionally have been well-compensated, although market forces will ultimately determine this. Those forces have recently put considerable pressure on local law firm salaries and the Legal Service and the Judicial Service recently adjusted salaries and their compensation frameworks to narrow the gap, especially for younger officers. That said, we should also recognise that those who come to the law because

they think it is a road to quick riches will likely find disappointment. Law is a demanding vocation. It takes time, decades in fact, to achieve a high degree of competence. It *is* therefore best seen as a calling to be answered with devotion and stamina, rather than as a gig to be experienced. To serve the many needs that you both have spoken of, we will require lawyers with that sort of commitment. And simply stated, money cannot be the reason to do what we do, in the spirit in which we are called to do it. So, addressing this issue too will depend in the end on clearly re-establishing the mission that we are signing up for when we embark on a career in the law, and *this* is what we must showcase to those contemplating entry to our profession, if we are to attract those whose hearts are in the right place.

## ***B. Reimagining the landscape***

30. I turn to the second broad point, which is the emerging legal landscape. I have spoken on several occasions about how globalisation and technology are reshaping that landscape.<sup>10</sup> These forces have changed the *where* of legal practice by breaking down jurisdictional silos; and upended traditional notions of just *what* legal services are, *who* are involved in delivering them and *how* they do so. These changes have been accelerated by the pivot towards the greater use of technology over the last three years. And they are to be seen in the context of changes affecting all aspects of modern life. Technology, big data, artificial intelligence, and privacy are issues that concern all of society

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<sup>10</sup> See, e.g., Sundaresh Menon CJ, “Law Schools: A Time of New Burdens and New Beginnings”, James P White Lecture (30 October 2018).

and we need to ensure that we have lawyers who are familiar with and able to deal with the legal issues they will throw up and also to contribute meaningfully to the broader discussions about how we should integrate these realities into the fabric of our lives. An important aspect of ensuring this will be to modernise the way we educate legal professionals.

31. In 2021, a Working Group, comprising members of the Judiciary, the profession, law schools and legal education providers and the Government, was formed to conduct a holistic review of our legal education system. Their work is under way. This is an effort directed at safeguarding the future of our profession at a time of unprecedented change, and it is unlikely that a purely incremental approach to thinking about the required changes in legal education will suffice. We must acknowledge the scale and complexity of the challenges that we face. So I very much hope that the law schools and the profession will support the Working Group and embrace its eventual recommendations.

32. The same spirit has animated our efforts at judicial education. The Singapore Judicial College ("**SJC**") was established in 2015 to serve as the central institute for higher judicial learning with special attention to leadership, judgecraft, legal knowledge, research, pedagogy and systems. The SJC is a strategic institution that will help equip the Judiciary to meet the challenges that face us and it too is at an inflexion point. Former Judicial Commissioner and Dean of the SJC, Foo Chee Hock, will be retiring in April after more than 30 years of distinguished public service. I am grateful to him, and wish him



well in his future endeavours. We are progressing our search for a suitable candidate to lead the SJC in the next chapter of its development. Until then, District Judge Paul Quan will double up as the Acting Dean and he will be supported by the Board of Governors including the new chair, Justice Kwek, and the Vice-Chairs, Justices See and Jeyaretnam, as well as Justice Phang, who has kindly agreed to serve as Senior Advisor to the SJC.

### **C. *Access to Justice***

33. Let me finally touch on access to justice, which must be at the core of our justice system. Even the best justice system will be worthless if it is inaccessible. This is an especially pressing concern in the prevailing global context of rising inflation and sharpening inequality. All of us must apply ourselves to the task of ensuring that justice is accessible to those in our community at risk of being shut out.
34. The task is complex and requires a multi-pronged approach:
  - (a) First, there is public legal aid, such as that offered by the Legal Aid Bureau and the newly established Public Defender's Office, which you, Mr Attorney, have mentioned.
  - (b) Second, and just as importantly, there are private forms of legal aid. The Law Society's Pro Bono Services Office and the Criminal Legal Aid Scheme are among the most notable achievements of our profession and they rest on the invaluable contributions of private legal practitioners.

(c) Third, the Judiciary has been working on many initiatives, some of which I have already mentioned. These are part of a broader effort to develop an access to justice framework that is geared towards serving the needs of our court-users. To this end, we will revamp the way we use digital tools to enhance access to justice by providing more information including through the use of chatbots, and by enhancing our e-services. This will enable our lay users to better understand the issues and in certain types of matters to file documents, get online assessments, and even attempt settlement. We hope to use AI not just to offer a discount, Mr Tan, but also to provide some services for free. We are also looking into other aspects of enhancing access to justice such as using plain language in our communications, rules and directions, and creating guides prepared with lay users in mind, using print and video media. We will also make it easier for our users to physically access our services through the development of service hubs at each Court; and through service centres located in the community.

35. These diverse efforts of the Judiciary rest on our firm conviction that the Judiciary is here not just to decide cases, but ultimately to serve our users and help them in their quest to find justice. This entails a change of mindset driven by something you, Mr Attorney, touched on: namely, the importance of securing public trust. You noted that adherence to the rule of law is not a natural state. As much as such adherence is underpinned by the political commitment of the Government, that commitment derives from the

acceptance of the notion that our society is governed by the law. And it draws strength from the fact that our institutions enjoy high levels of public trust as well as the recognition of the importance of sustaining that trust. For us in the Judiciary, this means among other things that we must do what we can to help our users because the inability to access justice has a pernicious and corrosive effect on public trust and in turn on securing the rule of law.

36. These initiatives and others which are in the pipeline are therefore critically important. I accept that they have the potential to disrupt the practices of some lawyers. But this is not only inevitable, it is necessary because it is incumbent on *all* of us to use all available means to break down the barriers that stand in the way of justice. None of this will render lawyers obsolete; rather it is targeted at those types of work which are relatively simple so that the legal issues they give rise to can be resolved at little if any cost.

## **V. APPOINTMENT OF SENIOR COUNSEL**

37. I have reached the point in my address where I announce the appointment of Senior Counsel. The Selection Committee has this year decided to appoint:

(a) Mr Poon Kin Mun Kelvin, and

(b) Mr Wong Woon Kwong

as Senior Counsel.

38. I congratulate them and look forward to their continued contributions to the profession.

## **VI. CONCLUSION**

39. Change has been a central theme of my address today. I have spoken of what has changed, what will be changing, what needs to be changed, but also of what must not change. Change can be unsettling, but it can be managed if we acknowledge its necessity, recognise its imminence, and are open to constructive feedback. I can think of no better time than the Opening of this Legal Year for us collectively to dedicate ourselves to addressing these changes, having come through one of the most challenging periods in our history. Our legal community is an exceptional one that I am proud of, and I know we will meet what lies ahead as we always have – with determination, excellence, and unity.
40. Thank you all very much, once again, for your presence this morning. On behalf of the Judiciary, I wish all of you a happy, healthy and fulfilling New Year.