

Speech by On Hung Zheng, President of the Law Society for the Opening of the Legal Year 2018

6 February 2018

1. Introduction

If I may, to the Honourable Chief Justice, Judges, Chief Judge of the Syar'ie Court, Mdm. Attorney General, distinguished guests, fellow members of the profession, ladies and gentlemen, I wish you all a very good morning.

I wish also to particularly extend a warm welcome to our overseas guests:

- 1) Mr Gregory Vijayendran, President of the Law Society of Singapore;
- 2) Mr George Varugnese, President of the Malaysian Bar;
- 3) Mr Brenndon Keith Soh, President of the Sabah Law Society; and
- 4) Mr Amirali Nasir, Vice President of the Law Society of Hong Kong.

2. Golden Jubilee and congratulations

The Law Society and I would like to take this opportunity to extend our warmest congratulations to His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien for the recent Golden Jubilee which commemorates not only the 50 years he has been on the throne but also the peace, prosperity and stability which has flourished from his leadership.

On behalf of the Law Society, I would also like to congratulate the appointment of a new Intermediate Court Judge, Judge Lailatul Zubaidah Binti Hj Mohd Hussain who was sworn in on the 5th August 2017.

3. Law and its effect on society

I am glad to see so many of us gathered here once more to celebrate this opening of the legal year. As we did not have a celebration last year, I feel I should be permitted to have double the amount of time for my speech.

In all seriousness, it is important on such occasions to remember that we gathered here today, as colleagues of the legal profession who play a vital role in upholding the rule of law. It cannot be

emphasized enough that our actions not only shape and inform the laws of Brunei but also impact the social and economic realities of members of the public. Thus, the relationship between the legal profession and the public must be guided by integrity, clarity and competency.

4. Legal Aid Clinic

Integral to the legal system is the ability of all members of the public to gain access to competent legal advice.

To this end, I am pleased to announce that we have re-commenced our legal aid clinic on 27th January 2018 and aim to hold regular advisory sessions once a month. Lawyers should be filled with a spirit to serve the public and it is important as part of that duty (moral or otherwise), to assist those members of the public who require legal advice but are unable to afford it.

I strongly urge senior lawyers to be involved and also hope that they can encourage their junior members to volunteer. These may not be hours which are billable in terms of fees but billable in terms of a higher currency, that of giving back to the community. It may be a debt collection issue or it may be a sad case of domestic violence, whatever the case let's use our legal skills to help those in need to get back up on their feet. The simple act of suggesting a course of action may be enough to bring hope to what might otherwise appear to be a bleak circumstance.

The Legal Aid Clinic however is not a viable solution for those in need of actual legal representation. The Law Society hopes that the authorities consider the establishment of a legal aid fund to help the less fortunate members of the public in both criminal and civil cases. Together, we should strive towards equal access to justice for all.

5. Awards in Claims for Personal Injury

It has been noted with some concern by stakeholders such as the Autoriti Monetari Brunei Darussalam ("AMBD") that awards of damages granted in Brunei for personal injury claims are among the highest granted regionally. Part of this concern stems from the previously unconsidered impact that escalating personal injury awards might have on the public at large. To this end, AMBD has engaged with the Law Society in ongoing dialogues to discuss their concerns. I would like to share with you just some general points.

Justice requires that an individual injured through no fault of their own should rightly be compensated. That is only fair. However, justice also requires that those who are at fault should not pay more than what might be considered proportionate or reasonable in the circumstances. What is proportionate or reasonable is often a very difficult question to answer.

Majority of these awards are satisfied by the insurance industry. The funds for these awards come from the pool of reserves collected from insurance premiums. A natural commercial result

of this might be that the industry will become less inclined to give higher discounts to customers and a greater number of people might end up paying more for their insurance.

To focus on a particular aspect of insurance, policies covering employer's common law liability are now typically capped at or about \$100,000.00. In many of these cases, a claim will exceed far more than the cover provided by the insurer. In cases where a claim exceeds the cap, the insured company must satisfy the excess and in these economically challenging times, it is worrying that this may lead to the shuttering or winding-up of those companies.

It is not suggested that awards be unreasonably diminished but that a balance must be struck between the appropriate amount of compensation due to an injured party and the very real consequences of a high award of damages.

We hope to continue our dialogue with AMBD and other relevant stakeholders on these issues.

6. Land Code

Although the draft land code amendments were gazetted in August 2016, they have still not been given effect yet. We are grateful that the Ministry of Development had sought the views of the Law Society which resulted in several discussions concerning the amendments. However, there remains great ambiguity as to certain provisions and the overall effect of the amendments.

Clarity and certainty in land ownership will greatly benefit the financial sector, the construction industry and the legal profession, to name a few. Since 2012, it has been difficult for the legal profession to address questions as to a purchaser's entitlement when they intend to buy a property.

It cannot be gainsaid that, clarity, certainty and finality on land ownership will result in both foreign and local investors having confidence to purchase property which may in turn encourage investment into the country. The Law Society hopes to be able to continue working with the Ministry of Development to assist where possible in resolving this ambiguity and any other legal issues concerning the Land Code. Our aim is to strive for renewed growth in this economic sector which will undoubtedly benefit all those who call Brunei home and the country as a whole.

7. Challenges to the legal profession

Aside from issues surrounding the land code, the legal profession is also facing challenges on other fronts. Firstly, we, unfortunately, have not escaped the ripple effects of the current economic climate. The current circumstances have led to a downturn in the property and construction related industries as well as the Small-Medium Enterprise business sector. The

profession relies greatly on these various areas of business for work. There is a direct relationship between their profitability and their capacity to hire counsel for legal services.

Secondly, the Law Society is greatly concerned with the increasing number of qualified local lawyers in Brunei. We acknowledge that this is a complex issue but the Law Society owes a duty to the future generations of lawyers to ensure the viability of the profession.

Presently, we are aware of at least 31 law graduates both from the UK and Brunei, who have completed or are completing the necessary professional qualifications. We have also been made aware that at least 40 more law students are expected to graduate in Brunei alone. It is of no surprise that these bright-eyed new lawyers would go on to look for employment with local firms or with the legal divisions in the government.

Consequently, 2017 saw one of the highest numbers of local admissions to the Brunei Bar. Some firms have reported to have received a higher than average number of pupillage applications in that year and a number of those applications had to be rejected despite good qualifications. As a comparison, in previous years, we would be lucky to receive even one pupillage application in a year.

Thirdly, the evidence suggests that there is a trend by local companies to directly engage foreign firms abroad for their services rather than engaging local lawyers due to their perceived lack of capability. There is a grave danger that with more legal services being sought outside Brunei, the window of opportunity for local firms to provide the same services is closing rapidly. This would in turn affect their capability to employ local law graduates and diminish the capacity for local firms to grow in size and expertise.

The vast majority of employees in our law firms are locals and they should be supported in every way possible. Not only will it make more economic sense but the members of the legal profession are more than capable to handle issues which concern Bruneian law.

8. Regulation of foreign firms

Presently, there is no legislation in place to regulate the setting up of a foreign law firm in Brunei. In our neighboring countries, legislation is in place which provides that the Attorney General Chambers or the Bar Council of those respective jurisdictions oversee the registration of foreign firms and allows the imposition of certain restrictions. An example of these restrictions might be that such firms would only be allowed to practice certain specified areas of the law. We have had preliminary discussions with the Attorney General's Chambers and though discussions are still in their infancy, I am hopeful the Law Society and the AG's office can work together to come up with a solution.

9. Intestacy

The current law regarding distribution of property of a non-muslim dying intestate in Brunei is unsatisfactory. Although the Probate and Administration Act indicates that distribution will be in accordance to the recognized and clearly-defined customs of the deceased's race, in this modern era, there are very few experts who could set out those customs clearly. There are often different or contradicting opinions provided by the experts which may only sow seeds of discord between family members during which must be an already distressing time. This uncertainty may give rise to disputes that are likely to end only with ugly and costly litigation between family members. The Law Society would propose that the relevant authorities consider an amendment to the Probate and Administration Act and to adopt a set of rules for the administration and distribution of property like our neighboring countries in Singapore and Malaysia.

10. Lawyers standards

It is of grave concern that the Law Society is receiving an escalating number of complaints against members of the profession alleging breaches of the practice and etiquette rules. We must remember at all times that the practice of law is a noble profession and we must always uphold the highest standards not only of ethics but also of practice. It must never be suggested that we merely pay lip service to the oath which we have all sworn to truly and honestly conduct ourselves in the practice of an advocate and solicitor according to the best of our knowledge and ability and according to the law.

Lawyers have a duty towards the administration of justice and a duty to uphold the rule of law founded on principles of equality, fairness and justice. In carrying out their duties, lawyers are required and expected to deal with the other members of the legal profession with courtesy and integrity. If lawyers do not adhere to these principles, our reputation and credibility as members of this noble profession may suffer as a result. Therefore, I urge our members to uphold and observe our practice and etiquette rules diligently.

I also strongly encourage pupil masters to ensure that their pupils are familiar with the practice and etiquette rules. Graduates who intend to practice in Brunei from the UK are required to sit for a professional ethics exam before being permitted to pass the bar. Why should it be any different when they intend to practice in Brunei? I would propose that pupils or lawyers seeking admission should be required to satisfy the Chief Justice or the Law Society that they have read and understood the practice and etiquette rules. The profession must not only be able to administer justice but also do justice to the profession.

11. ALA and JCMS

Last year, we saw Brunei, hosting the 39th Asean Law Association's Governing Council Meeting ("ALA"). The event saw our judicial officers, members of the Attorney General's Chambers,

practitioners and legal academics from ASEAN coming together to discuss cross boundary legal issues and ways in which we can help one another. It was a successful event and I want to congratulate all those who were involved in the meticulous planning and organization.

On other note, it has been 2 years now since the launch of the Judicial Case Management System and the judiciary's other initiatives to improve the management and clearance of cases. The response and results have largely been positive. The speed of processing and returning of legal documents as well as the allocation of hearing dates has increased tremendously. We also applaud the Judiciary's current initiative to be more pro-active in managing their cases and to ensure cases are being disposed of efficiently.

12. Conclusion

Before I conclude, I would like to express my heartfelt gratitude to our past President, Mr Rozaiman Abdul Rahman. I thank you for your guidance, patience and friendship while I was in Council. I also thank the outgoing Council members for the time, effort and dedication which they have made in support of the Law Society.

The Law Society cherishes its relationship with the Judiciary and the AGC. In ALA, we saw our three organisations working together to ensure the smooth running of the event. I understand that my events and sports committee are thinking of setting up a tripartite pseudo-Olympic games. I am excited about this initiative and hope we can build more on this friendship. I also hope that by coming up with this as opposed to the more traditional games like netball and futsal, the Law Society can finally win at something!

I would like to thank all the members of the law society who voted for us in the Council and I would like to also thank the members and the Council for putting their trust in me. I take this position with great humility and hope that together with your support we can achieve all that we set out to do.

I assure the Bar's full support for the Judiciary in all Courts. I reaffirm our commitment to co-operate with the Attorney-General's Chambers in the administration of justice and to seek to do justly and act efficiently in all cases before the Courts. I also extend to Your Honour, the Chief Justice, all your colleagues on the Bench, as well as the Honourable Attorney-General, the Bar's best wishes for your good health, fulfilment in all of your purposes and every other success.