

Speech by On Hung Zheng, President of the Law Society for the Opening of the Legal Year 2019

10 January 2019

1. Introduction

To the Honourable Chief Justice, esteemed members of the Judiciary, Chief Judge of the Syar'ie Court, Mr. Attorney General, distinguished guests, fellow colleagues, ladies and gentlemen, I wish you all a very good morning.

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

- 1) Mr Gregory Vijayendran, S.C., President of the Law Society of Singapore;
- 2) Mr Dato' Abdul Fareed, Vice President of the Malaysian Bar; and
- 3) Mr Ryan Soo, Treasurer of the Sabah Law Society;

Thank you for joining us today.

2. A Look Back at 2018

As much as we look forward to the new year, it is important for us to pause and take a look back at what has come before and 2018 has certainly brought with it a lot of changes. We note firstly:

1. The Retirement of Chief Justice Dato Seri Paduka Haji Kifrawi Bin Dato Hj Kifli;
2. The Retirement of Datin Seri Paduka Hayati binti Pehin Orang Kaya Shahbandar Dato Paduka Haji Mohd Salleh as Attorney General;
3. The Retirement of the President of the Court of Appeal, Dato Seri Paduka John Barry Mortimer.

On behalf of the Law Society, I offer our sincerest thanks and appreciation to their years of service and their contributions to the Judiciary and the legal community. We would like to congratulate them on their successful retirement and wish them joy in their further pursuits.

I would also take this opportunity to offer the Law Society's congratulations to:

- a. Dato Paduka Steven Chong as the Chief Justice;
- b. Dato Paduka Hairol Arni Bin Hj Abdul Majid as the Attorney General;
- c. Mr. Michael Peter Burrell, President of the Court of Appeal;
- d. Justice Pg Datin Paduka Hjh Rostaina Bte Pg Hj Duraman as High Court Judge;
- e. Hj Abdullah Soefri Bin Pehin Orang Kaya Saiful Mulok Dato Seri Paduka Haji Abidin as Chief Registrar;
- f. Judge Mohammed Faisal Bin Pehin Datu Juragan Laila DiRaja Dato Seri Pahlawan Hj Kefli as full time Intermediate Court Judge;

- g. Pg Masni bin Pg Bahar, the Chief Magistrate;
- h. Magistrate Pengiran Hazirah binti Pengiran Yusof and Magistrate Kamaliah Fadhilah binti Haji Ibrahim; and
- i. Appointment of 5 new Deputy Official Receivers to the Bankruptcy Unit.

We wish you the very best in your recent appointments are confident that you will discharge your duties with distinction and to the utmost of your abilities.

3. Legal Aid Clinic:

A core element of the administration of justice is the assurance that each and every member of the public shares an equal access to competent legal advice. We are all aware that these are economically-trying times for Brunei and a natural consequence of which is that more and more people are unable to afford the costs of getting the legal advice they need to protect their rights. In 2018 the Law Society took a small but significant step to address this problem by reinstating the Legal Aid Clinic program.

In our efforts to expand the reach of the Legal Aid Clinic to benefit as many members of the public as possible, the Law Society has, for the first time, allowed applications for legal advice through our website and hosting legal aid clinic sessions at Kuala Belait Court.

In its current form, the Legal Aid Clinic only provides free legal advice to qualifying members of the public. However, the Law Society has recognised that pro bono advice can only go so far to assist those with more pressing legal dilemmas. Thus, we have now introduced a pilot scheme to provide funding to the Legal Aid Clinic so that our volunteer legal professionals may offer not just advice but also representation to individuals who are unable to afford their own counsel.

Currently, the funding scheme is limited in scope and is available only for cases involving mitigation and/or plea bargaining for certain criminal offences and certain types of civil cases.

We would like to thank the Judiciary for their continued support in allowing us to use the Court's facilities to host the clinics. I would like to especially commend Ms. Veronica, the head of our legal aid committee and the lawyers from the 26 law firms who have taken time out of their busy schedules to participate in the clinics and to assist the less fortunate members of the public. It is a noble sacrifice which has been more eloquently described by American Justice Sandra Day O'Connor who said:

"Certainly, life as a lawyer is a bit more complex today than it was a century ago. The ever increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend to the bottom line, have made fulfilling the responsibilities of community service quite difficult. But public service marks the difference between a business and a profession. While a business can afford to focus solely on profits, a profession cannot. It must devote itself first to the community it is responsible to serve. I can imagine no greater duty than fulfilling this obligation. And I can imagine no greater pleasure." – 78 Or. L. Rev. 385, 391 (1999)

The Law Society re-iterates its hope that the authorities will consider the establishment of a legal aid fund to directly help the less fortunate members of the public who are unable to afford their own legal representation and better improve the public's access to justice.

4. Law and its effect on society

In our work on the Legal Aid Clinic, the Law Society is reminded of the inseparable bond between the legal profession and the community which we serve. We play an important role in the administration of justice and upholding the rule of law. The rule of law underpins the way which our society is governed and everyone from the private and public sector is bound by and entitled to benefit of laws.

Our ties to the community invariably means that the legal profession flourishes only when the community also flourishes. This includes the profession's ability to provide employment to an ever increasing number of law graduates. For the first time, the legal profession is finding it harder to resolve the oversupply of law graduates. It cannot be stressed enough that the growth of the profession is linked with the strength of our country's economy.

The Law Society notes that these are trying times and commends the authorities' ongoing efforts to embolden the nation's economy through diversification and by attracting foreign investment. An important aspect of working with other nations is the observance of the rule of law. A strong rule of law affects investor confidence in that their legal rights will be upheld and there is certainty in transactions entered into. This is precisely why laws have been enacted or amended and policies put in place these recent years that has resulted in Brunei leaping to 55th place globally (a jump of 50 places) for Ease of Doing Business according to the World Bank's Doing Business Report 2019.

5. Ombudsman

The observance of the rule of law is not only the duty of the members of the public but also officials who serve public bodies. In order to further the Country's efforts to strengthen its economy and to promote the rule of law, it is our view that authorities ought to consider establishing the office of an ombudsman whose role would be to investigate and address complaints of mal-administration in the public sector. The Ombudsman may report his or her findings and make recommendations to the organization as to how the complaint may be redressed or improved. The aim is to resolve complaints through recommendations or mediation which may help to identify issues such as poor service or a failure to comply with the relevant laws and regulations. We are hopeful that such an office will only work for the benefit of the country by increasing the effectiveness, transparency and efficiency of public administration. As a result, both local and foreign confidence to make long term investments will increase.

6. Land code

Public confidence in our legal system is also driven by clarity and certainty in the application of our laws. This undeniably includes the certainty of protections to individual property rights. The stability offered by those protections would incentivise local and foreign investment as well as creating a favourable environment to generate economic growth. One area of the law which my predecessors and I have addressed numerous times in the past is that of the Land Code.

The Law Society has given its views on the uncertainties in the land code amendments to the Ministry of Development and hopes that these issues may be resolved as soon as possible. I feel it is my duty to remind the authorities that we, not only lawyers, but members of the public require clarity and certainty on such a fundamental issue.

The continued uncertainty surrounding the fundamental right to buy, sell and own property for a period of almost 7 years is having adverse effects not only on the legal profession but on the economy as a whole.

7. Challenges/globalization of the profession

a. Increasing use of technology and automation.

In the face of economic challenges, it is easy to see why markets for legal work may turn towards streamlining and cost-cutting the services which have traditionally been provided by people/human beings. The legal profession must become aware of and adapt to the increasing use of technology in our field. In China for example, artificial intelligence-assisted transcription and virtual courts are in place in some Chinese jurisdictions. Such technologies allow for the automated determination of certain disputes between parties who simply enter a set of facts into a computer system. It is no wonder there are now discussions on whether AI could indeed replace judges or lawyers in the future.

b. Globalisation

A natural result of increasing globalisation is that the national boundaries to engaging law firms have become more porous over the years and some jurisdictions have opened up their respective markets for legal services. While the access to a larger market of clients is in principle a positive thing, I would re-iterate that it is vital to regulate foreign law firms intending to establish their presence in the country. There must be a balance between opening up and the need to develop Bruneian law firms especially in light of our increasing number of local graduates and to allow these firms to compete with foreign law firms on a level playing field.

8. Lawyers standards

a) Ethics and unauthorized persons

As members of the bar, we should uphold and maintain the highest possible standard of professional ethics and conduct. The legal profession has a duty not only to our clients but also to the Court to see that justice is administered fairly and to ensure that there is no miscarriage of justice. The standards of conduct required of members of the bar are expressed in our Professional Etiquette rules. We also owe a standard of care to our client, a breach of which, will expose us to a negligence suit.

Being a lawyer is not easy as we have to maintain a difficult balance between staying profitable and remaining true to the values of honesty, integrity, impartiality, and respect for persons, the Court and the law. These values also mean that we are not to take advantage of our own clients or other members of the public. A breach of these Etiquette Rules will subject a lawyer to a disciplinary procedure which may result in suspension or fine.

Bearing in mind this backdrop, it is easy to see why our Legal Profession Act makes it an offence for individuals to practice the law in Brunei without being authorised to do so. These unauthorised persons are disruptive and injurious to the administration of justice in our country. They have no obligation to the Court or to the public and their sole objective is personal gain. They operate outside the code of professional ethics that a lawyer must adhere to and so there is no deterrence against dishonest, negligent and nefarious conduct. The Law Society has received a number of complaints against a number of unauthorised persons and has filed police reports against these persons. To cut a long story short, the Law Society will not hesitate to take the necessary actions in order to protect our profession.

b) Negative impression

It is fair comment for me to say that there are some negative impressions of lawyers and a quick look on the internet will come up with an uncountable number jokes about our profession. For example:

Q.: What's the difference between a good lawyer and a bad lawyer?

A.: A bad lawyer can let a case drag out for several years. A good lawyer can make it last even longer.

Rowing: Sometime this year during one of the practice session for our rowing team, the boat capsized at buaya infested waters. All 8 of the lawyers were in the water and all of them were not harmed. When asked by a witness who saw the whole thing, why they were not harmed. Ahmad Basuni replied "Professional Courtesy".

On a more serious note, members of the bar must reflect on their own practice and ask themselves if they are worthy to be a member of this noble and honourable profession. The public must have confidence in the legal profession and administration of the law. This means

that the values which I have mentioned must be adhered to otherwise the profession will slowly lose its credibility and stature of being a respected profession.

9. OR accounts

Sometime last year, the relevant authorities discovered missing funds from the Official Receiver's Accounts at the bankruptcy registry. The Court would note that various stakeholders have been affected by the missing funds not least of all, the public but also the creditors. Debtors who have fully paid their debts should be discharged from bankruptcy but equally creditors should be entitled to receive all of the payment due on those long outstanding debts. The Law Society looks forward to the just and quick resolution of the issues arising from these missing funds so that creditors can receive their dividends and debtors are released from the stigma of bankruptcy orders made against them.

10. Initiatives by Judiciary

I am pleased to announce that for the very first time, Brunei will have a compendium for awards in personal injury cases. It was a collaborative effort between members of the legal profession and the judiciary who worked hard throughout the whole of last year to come up with this compendium. It is hoped that this table will be a useful guide to practitioners, judges and laymen of what can be expected in an assessment of damages for personal injury cases. The compendium is just a start but a big step forward in our continuing efforts improve the public's access to the law and perhaps one day, a more comprehensive book could be compiled.

11. Looking forward to 2019 and beyond

a) CPD Scheme

Not only do we need to maintain a high standard of conduct and discipline, but we also must also continue to improve our our professional skills. To this end, the Law Society is planning to organise an Advocacy training course sometime this year together with the International Advocacy Training Council. The Law Society have had preliminary talks with the Judiciary and Attorney General's Chambers on the establishment of a Continuing Professional Development scheme. The CPD scheme would be intended to improve the profession as a whole by requiring continuous legal education and updating of skills over time. It is my hope that this scheme will one day be realised and my successor will continue to push this initiative.

b) Amendments

The Law Society has submitted their proposed amendments to the Probate Act to have rules of distribution and hopes that it will be seriously considered to help bring certainty into this area of the law, an issue which I brought up last year.

We are also looking to amend the disciplinary procedures in order to have a fair and speedy resolution of complaints against lawyers.

c) Asean Bar Council

Sometime in July 2018, the Asean Bar Council was established. The Council's main focus is to be to strengthen co-operation between lawyers in ASEAN and to support the rule of law. I am pleased to witness the birth of this historic body and am excited to see what the future holds for the Council.

d) Sports

Later this year, we will be holding a tri partite sports games between the private practitioners, the Attorney General's Chambers and Judiciary. Last year's games were a smashing success when as usual Law Society did not win the football, badminton, bowling, netball and rowing. But we did win a few gold medals in the running events. I have asked Mr Mansur why are we organising games (year after year) that we keep losing to other people. I rather be giving free legal advice than free gold medals! So perhaps this year we should just cancel all the sports events and only have running events!

12. Conclusion

Before I conclude, it may be my last year serving as President, I would like to say that it has been a memorable experience and it has been an honour. I hope that the initiatives that my council has taken during my term will be carried forward.

My learned brothers and sisters, it is also my earnest hope that our profession can continue to be a light to society and protect and uphold our reputation and command the respect that comes with being in an "Honourable Profession".

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.