

SPEECH BY

**THE HONOURABLE CHIEF JUSTICE
DATO SERI PADUKA STEVEN CHONG**

OPENING OF THE LEGAL YEAR 2023

THURSDAY, 9 FEBRUARY 2023

Yang Berhormat Pehin Orang Kaya Laila Setia Bakti Di-Raja Dato Laila Utama Haji Awang Isa, Special Adviser to His Majesty The Sultan and Yang Di-Pertuan of Brunei Darussalam and The Minister in the Prime Minister's Office,

Honourable Attorney General,

Yang Mulia Acting Minister at the Prime Minister's Office,

Yang Amat Arif/Yang Berhormat Chief Syarie Judge,

President of the Law Society,

Members of the Bar,

Distinguished Guests,

Ladies and Gentlemen,

I. INTRODUCTION

1. On behalf of the Judiciary, I would like to welcome you to the Opening of the Legal Year 2023 and I am most delighted that we are able to hold this ceremony together again in-person.
2. As we enter the third year since COVID-19 came into existence, we have had to adapt to many changes in the way we administer justice. Judges, judicial officers, counsel in the private sector and prosecutors in the public sector alike were significantly impacted, not only in the modalities of work but also in the way we engaged with and delivered

services to court users, clients and enforcement agencies alike. We found ourselves working from home, managing cases, holding meetings and conducting trials online, supervising children unable to go to school, dealing with health issues, our own or others' and throughout, we kept our justice system running. While each of us faced many challenges arising from the pandemic, I believe we have emerged from it with more understanding, patience and resilience as a whole. It is therefore fitting that we are gathered here today, after returning in-person, to reflect on how our legal fraternity has navigated this new reality and how we can build on this momentum to further pursue the fair and efficient delivery of justice.

3. Before I report on the work done over the course of 2022, please allow me to outline some developments affecting the bench.
4. I would like to take this opportunity to congratulate Judge Radin Safiee bin Radin Mas Basiuni on his appointment as Chairperson of the Brunei Darussalam Arbitration Centre (BDAC). I am confident that he will apply his extensive knowledge and experience to help develop the dispute resolution landscape in our jurisdiction. My congratulations also go to Senior Registrar Kamaliah Fadhilah binti Hj Ibrahim and Magistrate Nur Eleana binti Dato Seri Paduka Haji Hairol Arni on successfully completing the 'Strategic Conflict Management for Professionals' training programme. They are now accredited mediators of the BDAC and Singapore Mediation Centre (SMC) and join our panel of experienced court mediators.
5. I am also pleased that our Judiciary continues to grow in strength through the appointment of two new judicial officers, Muhammad

Syafiq bin Haji Zakaria and Syaffina binti Shahif and it is my pleasure to welcome them to the bench. I would also like to extend my profound gratitude and appreciation to the officers and staff who have left or retired from the Judiciary in the past year. I wish to thank them for their dedicated service and valuable contributions and wish them every success in their future endeavours.

II. THE PAST YEAR

6. I will now give a brief account of how we have progressed in the past year.

Transition to online hearings

7. Online hearings are now a permanent feature of our courts, with a total of 3,542 cases conducted online between August 2021 and October 2022 whereby 50% of those cases were heard in the Subordinate Courts, 29% in the High Court and 21% in the Intermediate Court. In the Subordinate Courts, 75% of its online hearings were criminal trials and mentions, whereas 64% of online hearings in the Intermediate Court comprised of civil and commercial matters. Similarly, in the High Court, 50% of online hearings were civil suits.
8. We believe online hearings are here to stay and the use of videoconferencing platforms such as Zoom have been very much essential to our ability to continue functioning throughout the pandemic. Whilst Brunei Darussalam has since entered the endemic phase of its response to COVID-19, we take the view that the changes spurred by the pandemic should be retained, even when it is possible to revert to pre-COVID practices. We look ahead and will continue to encourage

online litigation in allowing aspects of our judicial process to remain online. Preparing the judicial system for any future eventuality is essential and our Judiciary will continue to leverage the use of technology in order to facilitate the expeditious processing of cases, help reduce case backlogs in the system and make justice more affordable and accessible to all.

9. Indeed, these are exciting times for the future of online litigation in the post pandemic world. We hope our initiatives continue to be supported by the legal fraternity and practitioners must not risk being left behind in these technological changes and would benefit by continuing to keep up to date on their digital literacy.

Statistics

10. On to statistics, in the 12-month period ending in December 2022, the number of civil appeal cases filed in the Court of Appeal, interlocutory hearings filed in the High Court and Intermediate Court and civil cases in the Subordinate Courts increased significantly compared to the previous year, signalling a positive return for civil and commercial litigation with the easing of restrictions as the economy re-opened. Similarly, applications for civil marriages through the Civil Marriage Registry and letters of administration and probate through the Probate Registry had also risen significantly compared to those in 2021.

11. While the number of rescission orders to discharge debtors from bankruptcy increased from 146 in 2021 to 219 in 2022, the number of bankruptcy notices filed at the commencement of bankruptcy

proceedings rose from 260 in 2021 to 348 in 2022, with a marked increase in the number of creditors meetings heard from 3,074 in 2021 to 3,587 in 2022. I am also pleased to report that from January to October 2022, payments of composition and dividends have been declared in 438 cases totalling \$22,818,107.46.

12. Meanwhile, the Subordinate Courts docketed 1,056 criminal cases in 2022, an increase from the previous year's number of 880 and correspondingly, the number of criminal cases on appeal to the High Court from the Subordinate Courts also saw an increase when compared to 2021.

13. In ensuring the efficiency of court performance, the Judiciary closely monitors clearance rates as an indicator of whether the court is experiencing a backlog in cases. I am pleased to report that notwithstanding the rise in caseload, the clearance rate of criminal trials in the Magistrate's Court stands at 76.8%, meanwhile the clearance rate for civil matters stands at 63.4%.

14. Another key performance indicator that the Court monitors is the time taken for the delivery of judgments by judges and judicial officers. Our statistics have shown that in 2022, 100% of judgments for civil trials in the High Court and 77% of judgments for criminal trials in the Magistrate's Court were delivered within our target of between 1 to 3 months from the close of submissions.

15. There is always room for improvement in the speed and quality of justice and we will continue to work towards achieving better disposal rates at all levels of court whilst also enhancing the standards and

quality of our judicial decisions. I sincerely appreciate the hard work and efforts that our judges and judicial officers have made to help move our court system forward and I reiterate the importance of securing ongoing education and training to support our sustained performance.

16. As for cases referred to mediation, a total of 90 suitable cases were invited to mediate with the courts. From these, only 17 cases agreed to participate in mediation, with 4 cases successfully settled by consent and 4 cases still pending to be heard before court mediators. With 73 cases declining to participate in mediation or failing to reply to the court's invitation to mediate, it is clear that there is a reticence and apathy by counsel and/or parties to actively engage in mediation. I must acknowledge the work that the BDAC has done in promoting the use of mediation in our jurisdiction. However, practitioners themselves must look to expand their knowledge and competencies of the mediation process in obtaining the necessary training and accreditation in mediation. For mediation to grow and thrive, I would strongly encourage practitioners to shift their mindset from an adversarial to a collaborative one in the context of dispute resolution and to advise on the suitability and benefits of mediation as an effective and cost saving alternative to litigation for the best interests of their clients.

International Engagement

17. On the international front, we have continued to engage actively and advanced judicial cooperation with our foreign counterparts. Over the course of the year, we were involved in various events, including:

- i. The 3rd China-ASEAN Justice Forum hosted by the Supreme People's Court of the People's Republic of China, with the theme of 'Establishing a High-Level Judicial Cooperation Platform to Jointly Build the 21st Century Maritime Silk Road' where we reaffirmed judicial networks to support China-ASEAN trade, investment and economic recovery post pandemic;
- ii. The inaugural 'Insolvency Training Programme for the Brunei Courts, the Attorney General's Chambers, The Law Society, Banks and Financial Regulators' hosted and organized by INSOL International, and I wish to thank our Justice Kannan Ramesh for setting up this collaboration between the Brunei and Singapore Judiciaries in bringing together key players in the domestic insolvency and restructuring landscape;
- iii. The 18th Conference of Chief Justices of Asia and the Pacific organised by the Judicial Section of the Law Association for Asia and the Pacific (LAWASIA) and hosted by the Judiciary of the Hong Kong Special Administrative Region of the People's Republic of China where views and insights on issues of common interest on the administration of justice were shared amongst 24 Chief Justices and 8 representative judges from across 32 Asia-Pacific jurisdictions; and
- iv. The 10th Meeting of the Council of ASEAN Chief Justices (CACJ) where we strengthened our commitment to judicial cooperation with our ASEAN counterparts and welcomed new collaborations through the inaugural ASEAN+ meeting between the CACJ and the Judiciaries of The People's Republic of China, Japan, and the Republic of Korea.

Ethics and Professional Standards

18. This past year has brought sharp focus to the issue of ethics and professional standards in the legal profession. According to data provided by the Law Society, there were 23 complaints heard by the Inquiry Committee from 2018 to 2022, of which 3 were investigated by the Disciplinary Committee. At the end of 2022, the Court heard an application for a Show Cause Order against a senior member of the Bar for misconduct. The Court was satisfied that there was dishonesty and deceit by the solicitor and misconduct was so serious that striking off was warranted.
19. I must reiterate that the Court will not hesitate to take firm action when necessary to uphold public confidence in the administration of justice and in the integrity of the legal profession in order to protect the public who are dependent on the services of solicitors and to deter any misconduct in the profession. Errant solicitors who are found guilty of misconduct will be punished accordingly and I believe that the legal fraternity must work together to send a strong message that any degradation of standards is not acceptable. Necessary measures must be introduced to foster ethical and professional standards before there are serious and lasting ramifications to our profession.
20. The legal profession is an honourable one and the core attributes of integrity, excellence and service must be put in practice and the commitment to serve and contribute is vital. I am hopeful that those who have chosen this path in service of the law will remember that they have chosen it not only because it aligns with their individual strengths and passions but also that they would be able to use those very

strengths and passions to serve the needs of the community in which we live.

21. On that note, I must commend members of the legal profession who have contributed to the work of the Legal Aid Clinic in ensuring access to justice and those who have provided pro bono representation. I thank you for dedicating your time and energy to this important cause and meeting the needs of the underprivileged, even with disruptions faced due to the pandemic. I urge young members of the Bar to become actively involved in this integral part of being an advocate. Professional success should not be measured by status and material wealth but by the positive and meaningful impact one has on the lives of others, particularly for those who are disadvantaged.

22. In November 2022, we saw the coming into effect of the Pupillage Framework by the issuance of Practice Direction of 3 of 2022 and I wish to thank the committee for its efforts and contributions in making the framework a reality. It is my hope that the Practice Direction will ensure a comprehensive framework for the training of young lawyers, not only in the law but also in professional ethics, which will assist in enhancing public confidence in the quality and integrity of the profession. We must do what we can to support pupils when entering the workforce as their formative experiences and preparedness is key in nurturing their values.

23. Equally, we hope to cultivate and retain top talent in the legal profession and support the pursuit of professional development opportunities. With that, I wish to congratulate the group of young lawyers who recently won the Best International Team trophy and

represented Brunei Darussalam's Law Society at the finals of the mooted competition held in Singapore by the Essex Court Chambers and the Singapore Academy of Law. I encourage junior members of the Bar to participate in such competitions to develop and showcase their advocacy and reasoning skills. It also provides opportunities to foster partnerships, network and engage with lawyers from other jurisdictions and learn about developments in the legal field.

Code of Practice for the Conduct of Criminal Proceedings

24. I am pleased that the Code of Practice for the Conduct of Criminal Proceedings is ready for publication and I must thank members of the committee for their valuable contribution in formulating it. It is my hope that the Code of Practice will support the work of the criminal justice system and will help to ensure due process and fair outcomes for those impacted by the criminal process. The successful administration of criminal justice lies in the collective efforts of the prosecution and the Bar and I am optimistic that the Code of Practice will promote a spirit of mutual respect and cooperation in the conduct of criminal proceedings.

Access to Justice

25. I am also pleased to inform that initiatives have been made to develop the Judiciary's access to justice in order to better serve the needs of our court users. I must commend the Subordinate Courts for making available online guides that allow members of the public to better understand court processes and procedures.

26. As of 6 February 2023, court users can find more information and content on the workings of the Magistrate's Court, Juvenile Court, Road

Traffic Section, Small Claims Tribunal, Registrar and Notarial Services and Counter Services on the Judiciary website. Efforts to enhance access to justice in this way enables lay persons to better understand in plain language the issues before them should they find themselves in court or if they are in need of the court's services. Ultimately, helping court users understand judicial processes promotes access to justice, especially for litigants in person who may find it difficult to navigate court procedures on their own.

III. LOOKING AHEAD

Introduction of McKenzie Friends

27. Widening access to justice means effective access to legal assistance, legal advice and where necessary, representation. The number of legal aid applications granted for capital cases alone grew from 3 in 2021 to 17 in 2022 and with the presence of litigants who appear in court without representation becoming more commonplace, the justice system still needs to assist those who fall in the gap that exists for those who are unable to afford to instruct a legal professional but cannot qualify for legal aid or pro bono assistance.

28. For this reason, I would like to propose for the Chief Registrar, Law Society and the Attorney General's Chambers to consider the introduction of a "McKenzie friend" scheme involving participants such as university law students and those in pupillage to provide assistance to unrepresented litigants not eligible for legal aid and cannot afford legal fees. A guidance or code of conduct would have to be in place to regulate and specify the tasks they could undertake. However, this scheme could potentially make justice more accessible for those

struggling to afford legal services and I would suggest that this be studied further by the legal fraternity.

IV. APPRECIATION

29. As I conclude, I would like to express my appreciation to the Chief Registrar and members of the organizing committee for the preparations made for today. I also wish to thank the Prime Minister's Office, State Judiciary Department, Department of Adat Istiadat Negara, Department of Environment, Parks and Recreation and Accident and Emergency Department of RIPAS Hospital for their assistance and continued support. I am also grateful to the Commissioner of Police for the Guard of Honour Parade. We very much welcome the parade's return after its absence for the past two years due to the pandemic.

30. It was a full and productive last year for our Judiciary and we will continue to strive for excellence and seek to improve in all aspects of our work in order to build a fair and efficient justice system. Once again, I am honoured and privileged to thank all of our judges, judicial officers, court staff, and personnel for their hard work and efforts in discharging their duties. I also wish to thank the legal fraternity for its steadfast support and encouragement. Together, we show the importance of the service that the law can render, most especially when times are hardest. My best wishes to you all for the year ahead.