

SPEECH BY

THE HONOURABLE CHIEF JUSTICE
DATO SERI PADUKA MOHAMMED SAIED

OPENING OF THE LEGAL YEAR 2002

THURSDAY, 30 MAY 2002

Mr. Attorney, Honourable Pehin Isa, members of the Bar of Brunei Darussalam, ladies and gentlemen.

On behalf of the Judiciary I am pleased to welcome you all here this morning in an atmosphere which is, I am glad to say, infinitely more comfortable than what you experienced at the last occasion.

We, the staff of the Supreme Court, take this opportunity of expressing our gratitude to His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for his visit to this Courthouse on Tuesday, 2nd April 2002 to acquaint himself of the conditions under which the staff had been obliged to work since the total breakdown of the air-conditioning system some months ago.

We remind ourselves of His Majesty's unforgettable query, which very clearly expressed his concern at the 'sauna-like' conditions prevailing in the courthouse, "How can you work in this heat?"

May I with great respect pray that I be permitted to say that the staff of the Judiciary feel justified in interpreting that remark as a testimonial of Royal recognition of their singular patience and endurance and their resolve to steadfastly keep the wheels of justice turning during that period of adversity.

I am sure that you will join me in expressing our appreciation and congratulations to them for their sense of duty, perseverance and praiseworthy conduct.

A few days after His Majesty's visit the air conditioning system became operational, and for that we are most grateful.

Some of you perhaps miss the personality who had occupied this chair at many such previous functions. Sir Denys Roberts retired during the first half of 2001, and now lives in Innerleithen, not very far from Edinburgh, Scotland.

I can say confidently that during his tenure he was well known throughout the land. His wit and personal charm endeared him to everybody. His vast experience in the British Colonial Service, where he excelled both in the administration and the judiciary, brought him recognition and promotions to the top. All this made him a unique personality.

The extent of his knowledge and understanding of the law, his industry and judicial technique in the formulation of his judgments is readily appreciated by those who have had the opportunity of appearing in his court and reading his judgments in the local law reports, which he seems to have monopolized over the years. These law reports contain a wealth of his exposition of the local laws, and are of tremendous assistance to the practitioners as well as to those who administer justice in these courts.

Everyone in this part of the world appreciates his contribution to the progress and development of our legal system.

We look forward to seeing Sir Denys Roberts in October as the next President of our Court of Appeal.

It is natural for people, and the legal profession is no exception, to start comparing the past with the present to make their own assessment of the changes that they may have been able to discern. Indeed it is true as is often said 'old order changeth, yielding place to new'. I need not make any comment on this aspect yet; perhaps it is too early to say.

The Court of Appeal had, as usual, two sessions in 2001, dealing with 19 criminal and 20 civil appeals, a total of 39, compared with 44 in 2000. These figures show that the workload of the Court of Appeal has remained constant.

There were 17 criminal cases registered for trial in the High Court and 14 in the Intermediate Court; and 130 criminal appeals from the Magistrate's Court were registered in the High Court, as compared with 44 criminal trials, and 67 criminal appeals in 2000. 208 civil cases were registered in High Court last year and 148 in the Intermediate Court.

The four Registrars of the High Court dealt in 2001 with 636 matters, largely interlocutory, compared with 777 in 2000.

The Registrars are also required to deal with bankruptcy matters. In the past year 350 bankruptcy cases were registered, which represents an increase of 24 from 2000; 165 receiving orders were made and 31 adjudication orders made as compared with 166 and 28 respectively in 2000.

The fact that the figures remained almost static does not mean that the Registrars dealing with those matters spent correspondingly less time on them. However, it is felt that the Registrars, who also have to deal with a wide variety of preliminary interlocutory matters in other civil suits, should be spared the burden of having to deal with bankruptcy matters.

I suggest it is time now to consider setting up the office of Official Receiver to deal with bankruptcy matters. This will enable the Registrars to devote all their time to the interlocutory and other matters, hence the likelihood of early civil trials. Consequently, we can look forward optimistically to an increase in the disposal of civil cases.

I should like to emphasise that the Registrars carry a heavy responsibility, both in terms of the workload and the nature of the work involved. The commitment with which they have always carried out their onerous duties deserves public recognition, and I say to them 'thank you and carry on as usual'.

This section dealing with statistics will not be complete without reference to our Magistracy. I have left it last deliberately because I believe that it deserves special reference. Unfortunately, one of our up and coming magistrates has left the Judiciary of his own accord. We now have to make do with five magistrates only. We hope that a replacement will not be too long in coming.

The total number of criminal cases registered last year in the four Magisterial Districts was 2903, an increase of 287 from the year 2000. Of this Brunei/Muara District's share of criminal cases last year was 2382, which was higher by 409 than the number in 2000.

Civil cases registered in 2001 in the four Districts totaled 1227, a decrease of 204 from the year 2000. Of those figures Brunei/Muara had 1032 civil cases registered last year, showing a decrease of 234 from the year 2000.

Magistracy being the busiest part of the Judiciary, all sort of citizens appear before Magistrates every working day to answer to almost every conceivable offence on the statute book. How they are treated and dealt with in open court, that is, in full public view, creates the first and perhaps lasting impression of the workings of the judicial system in the mind of the public. Therefore, our Magistrates bear the heavy responsibility of projecting the true face of justice that the citizens lawfully expect from their courts.

Without in any way trying to blow our own trumpet, I am able to say based on the paucity of complaints received by me that despite their workload the magistrates have been able to uphold, by their conduct, patience and comprehension of the law and court etiquette, the best traditions of the justice system.

The Magistracy is proud to let it be known that their effort in clearing up the backlog of traffic cases going as far back as 1995, with the cooperation and full support of the prosecuting authority including police prosecutors, has shown a marked reduction in the number of pending cases. Magistrates working in rotation every day and starting court at 8 a.m. have been able to substantially reduce the backlog. They are now dealing with the more recent traffic cases for the years 2000 and 2001.

I have no doubt that you too will appreciate that this was indeed a worthwhile and successful exercise of the Magistracy.

It will not have escaped your notice that these statistics are incomplete in that they are lacking in providing any statistics of the number of cases of both categories that were disposed of by the various courts. As such I cannot defend the likely and the fully justified criticism that there is nothing before this audience in terms of figures to adjudicate upon the actual performance of the courts, which must be of some significance to the public.

I readily accept that stricture but will maintain that this was not by design, certainly it was not premeditated; rather it was due to following the previously established practice. I have already taken some remedial steps and hopefully the statistics in future will include figures to show the performance of the various courts in the disposal of the cases.

While on this topic of performance I should like to acknowledge with our thanks the hard work and laudable efforts of the Chambers of the Honourable Attorney General in publishing recently revised issues of eleven chapters of the Laws of Brunei, which had been eagerly awaited by the practitioners. This has reduced the agony of having to spend long periods of time wading through the maze of numerous amendments to decipher the present law about matters like Civil Procedure, the Penal Code, the Criminal Procedure Code, the Misuse of Drugs and the Evidence Act. I hope that this exercise of producing revised issues of the laws will continue.

Some important matters were mentioned last year, which I think require to be reiterated, because in my view they are important. What follows is not a rehash of what was said last year. That would

be boring indeed, but I shall make a brief reference to the main topic and proceed to attempt in as few words as possible to explain and stress its importance, hoping that those matters will be considered and decided upon in due course.

Legal aid is restricted to capital cases only. It was suggested that fees for defence counsel be increased. The subject of the appointment of a public defender in criminal cases coming up in the High Court was mentioned yet again.

Not all accused persons who are committed for trial in the High Court or in the Intermediate Court are able to afford legal representation. Apart from murder, they face serious charges, for which stiff sentences are prescribed, and invariably the law fixes a minimum sentence of imprisonment, by no means any lighter.

It is essential therefore in the interests of justice that such defendants be provided legal aid based on a means test, similar to the comprehensive systems in practice in other common law countries, to name but a few, Hong Kong [Legal Aid Ordinance, Cap. 91, Laws of Hong Kong], Singapore [Legal Aid and Advice Act, Cap.160, Statutes of the Republic of Singapore], and the U.K. Criminal Defence Service (CDS).

The next topic that awaits attention is the motor insurers bureau, relevant papers of the Singapore Scheme having already been sent to the Attorney General in March 1999. This relates to road traffic accidents caused by uninsured drivers. The scheme is aimed at safeguarding the injured person or the family of the victim, who unfortunately does not survive the accident, and they will be spared much heartache and bother to get sufficient redress for their suffering as a result of the accident.

Mention was made also of the establishment of a Law Society. Honourable Pehin Isa had agreed that a Law Society was essential. Unfortunately the relevant parts of the Legal Profession Act have not yet been brought into force. A special Committee was appointed to deal with this matter. While I was considering this address an interim report of the progress made by the Committee was handed to me. I am pleased to note that it is envisaged by the Committee that "the Law Society of Brunei Darussalam will become a reality before the end of this year."

With the profession growing in numbers, there now being 250 plus on the Rolls, and the complaints from the public showing a minor increase, the message to the Committee must be to strive to deliver by the time suggested by them. I wish them well in their efforts.

Reference was also made to removal of the immunity of the Government from being sued in negligence in the context of the projected and much publicized Government policy to make Brunei an off shore investment and financial center. The former Chief Justice pointed out that "removal of the immunity of the Government would not affect that of His Majesty, who will remain inviolate".

Mr. Attorney had elaborated on the plethora of legislation that had come into effect or was being considered to facilitate that goal.

No doubt this is a very significant and important matter for the country.

In this regard the role and contribution of the courts cannot be overlooked. Local courts anywhere, because of their independence and adequate qualified and experienced manpower, play a significant part in maintaining and sustaining that status, once the country has attained it.

It is recognized that investors and those making funds available are understandably extremely careful in their dealings and are shy of places where they are not satisfied or are suspicious about the security of their money because of various factors including, for instance, lack of a dependable and reputable legal system.

Outsiders have to be satisfied that our judicial system and the courts are of comparable standard with any other country in every respect, and have sufficient resources in terms of suitably qualified and experienced manpower at their disposal to be capable of dealing with any matter that may arise effecting their dealings and transactions efficiently and independently of any constraints from any quarter.

It must be recognized that no judicial system anywhere can claim to be perfect. However, Brunei Darussalam has a judicial system based on the time-honoured principles of equity and rule of law that enjoys a reputation for its independence and integrity far beyond its borders, and the Courts have the facilities and means to meet the needs of the changing times.

The establishment of a Judicial and Legal Services Commission has been canvassed before. I should not repeat what has been said in the past about the desirability of appointing this Commission, except to re-emphasise its importance to the Judiciary and the justice system as a whole.

The professional independence of the members of the practicing Bar is just as important, for if they are not able to withstand the outside pressures in their dealings with their clients as to the manner in which they should proceed to conduct themselves ethically, there is every likelihood that their suspicious activities would in all probability tarnish the image of the courts in which they practice as well as of the judicial officers. This provides in my view further impetus for the establishment of the Law Society sooner rather than later.

With regard to the availability of courts I am glad to say that we expect the construction of a new building for magistrates' courts and some other government departments in the neighbourhood of this courthouse, just behind the Law Building next door, to start in the near future. It is hoped that upon the completion of that project there should be sufficient number of courts available for our present and foreseeable needs.

While on this topic may I also add with great pleasure that construction of the new courthouse building at Kuala Belait has been completed, and it is hoped that the new courthouse will be commissioned in the not too distant future.

I note that it has been suggested in the past on more than one occasion that, in order to ease the prison population of the Jerudong main prison, the courts' sentencing powers be extended to include imposing suspended sentences and community service orders.

With regard to youthful offenders, whereas Rules for the detention of such offenders have been promulgated, the only place of detention that has been appointed is the Jerudong Prison. Irrespective of the intake of such offenders it is clear that detaining them in the same prison, segregated perhaps from adult prisoners, does not help reduce the prison population, nor does it commend itself to character building of such convicts. Preferably they should be housed in separate detention and training centers under the care of qualified and trained staff.

Such measures, including also the suspended sentence and community service order, have two, if not more, advantages: first, they help reduce the prison population as has happened in other countries; secondly, and beneficial most of all to the offender, these measures will provide adequate means to help reform such errant and wayward young people, hopefully turning them into useful citizens, which will be to the general good of the community. I should recommend that these be made available to the courts as soon as is conveniently possible.

Since mention was made last year of the Brunei Law Reports. I should point to the distinction between the two different type of reference books that we have: there are the bound volumes, usually blue in colour, that are a collection of the judgments of our courts, and called the Judgments of the Courts of Brunei or JCBD in short. JCBD do not come with any head notes or indices, which makes research extremely arduous: one has to go through the whole volume before he gets the authority that he is looking for. The first volume of the blue book for 2001 has already been published.

As opposed to the JCBD there are the maroon coloured Brunei Law Reports or BLR in short, which are in the form of proper law reports, with full head notes, and complete indices. and so far we have the BLR for the years 1985 – 1993.

We have started providing head notes to our judgments to help facilitate easy access to their contents. We hope that this has made some difference and made the laborious task of searching recent judgments of the High Court for any particular topic less onerous and a lot easier than before.

I should like to reiterate what has been said in the past that in all jurisdictions one of the most important and much valued features of any courthouse is its library which houses books and various journals of reference on myriad of legal subjects and topics. I can assure you that we do not collect these large tomes beautifully bound in various colours and with gold lettering for the sake of making the bookshelves in the library look ever so attractive. Our main concern is that we do not lag behind through ignorance of the continuous development of the common law in other countries. Keeping abreast with such development helps evolve our own local jurisprudence hopefully on par with any other country having similar legal system.

In this effort we should not be held back or constrained by lack of adequate funding, bearing in mind that such reference books and journals do cost much more than ordinary dictionaries or novels.

As will have been noticed judges of the Supreme Court are no longer resplendent in their imposing red robes and full bottomed wigs. To do away with that uniform was a sad but very wise decision. We are now content with wearing black gowns, the wing-collar and bands.

You may have seen that some other countries have devised, perhaps in consultation with some fashion experts, their own distinctive court attire reflecting the national identity.

Your judges here are unanimous in this matter and are desirous of adopting a court attire that is distinctive and reflects the national identity.

The other proposal that our Chief Registrar is presently considering is for the Supreme Court to have a distinctive logo as some government institutions have, like the police and the prison services.

I am grateful to the Commissioner of Police for the fine guard of honour, which I inspected earlier. This forms an essential part of the Opening of the Legal Year. It is not only ceremonial as some people might take it to be, but it emphasizes the important role of the police in the maintenance of the law and order in the country.

That said I must also recognize the services of the court prosecutors in the Magistrates' courts who usually are police officers. In keeping with the practice in other countries, it may be advisable to arrange on permanent basis, if it is not in practice already, refresher courses for the prosecutors to enhance their knowledge and skills.

May I also thank all members of the staff of the Judiciary and other personnel for their dedication in their respective duties that have made the Judiciary operate properly, and also for their contribution in the arrangements for today's function.

Lastly, the gratitude of the Judiciary goes to all of you for sparing some of your valuable time to come to grace this occasion.